IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANCE TO END REPRESSION, et al.,	)	
Plaintiffs,	)	
v.	)	No. 74 C 3268
CITY OF CHICAGO, et al.,	)	
Defendants;	)	
AMERICAN CIVIL LIBERTIES UNION, et al.,	)	
Plaintiffs,	)	
v.	)	No. 75 C 3295
CITY OF CHICAGO, et al.,	)	
Defendants	)	

MEMORANDUM OPINION AND ORDER

SUSAN GETZENDANNER, District Judge:

These actions come before the court on motions for preliminary relief. Plaintiffs seek an order temporarily restraining the Federal Bureau of Investigation from implementing within the City of Chicago portions of the Attorney General's newly-announced Guidelines on Domestic Security/Terrorism Investigations.

(Hereafter referred to as the "Reagan Guidelines"[1]) Plaintiffs contend that the challenged portions of the new Guidelines are inconsistent with the "permanent principles," Alliance to End Repression v. City of Chicago, 91 F.R.D. 182, 200 (N.D.Ill. 1981), underlying the settlement agreement concluding these two lawsuits. For the reasons to follow, the court finds that the plaintiffs are entitled in part to relief they seek.

I.

These cases commenced nearly ten years ago with the filing of complaints asserting that various "federal defendants"[2] had engaged in conduct within the City of Chicago violative of the plaintiffs' constitutional rights. In particular:

> Plaintiffs in both cases claim that the settling defendants have conducted surveillance of, and compiled dossiers on, their lawful political and other lawful activities; gathered information about plaintiffs by unlawful means, including warrantless wiretaps and break-ins, unlawful use of infiltrators and informers, and by other unlawful means; disrupted and harassed plaintiffs' lawful activities; and further, that defendants have also committed these alleged wrongs against members of the plaintiff classes, all as part of a continuing course and pattern of alleged illegal conduct.

1/ This document, promulgated March 7, 1983, also contains Guidelines relating to "General Crimes Investigations" and "Racketeering Enterprise Investigations." These standards are not relevant here, except for the portion of the "General Crimes" section dealing with "Preliminary Inquiries." See Part IV., infra. The full text of the new Guidelines can be found at 32 Crim. L. Rep. (BNA) 3087 (1983)

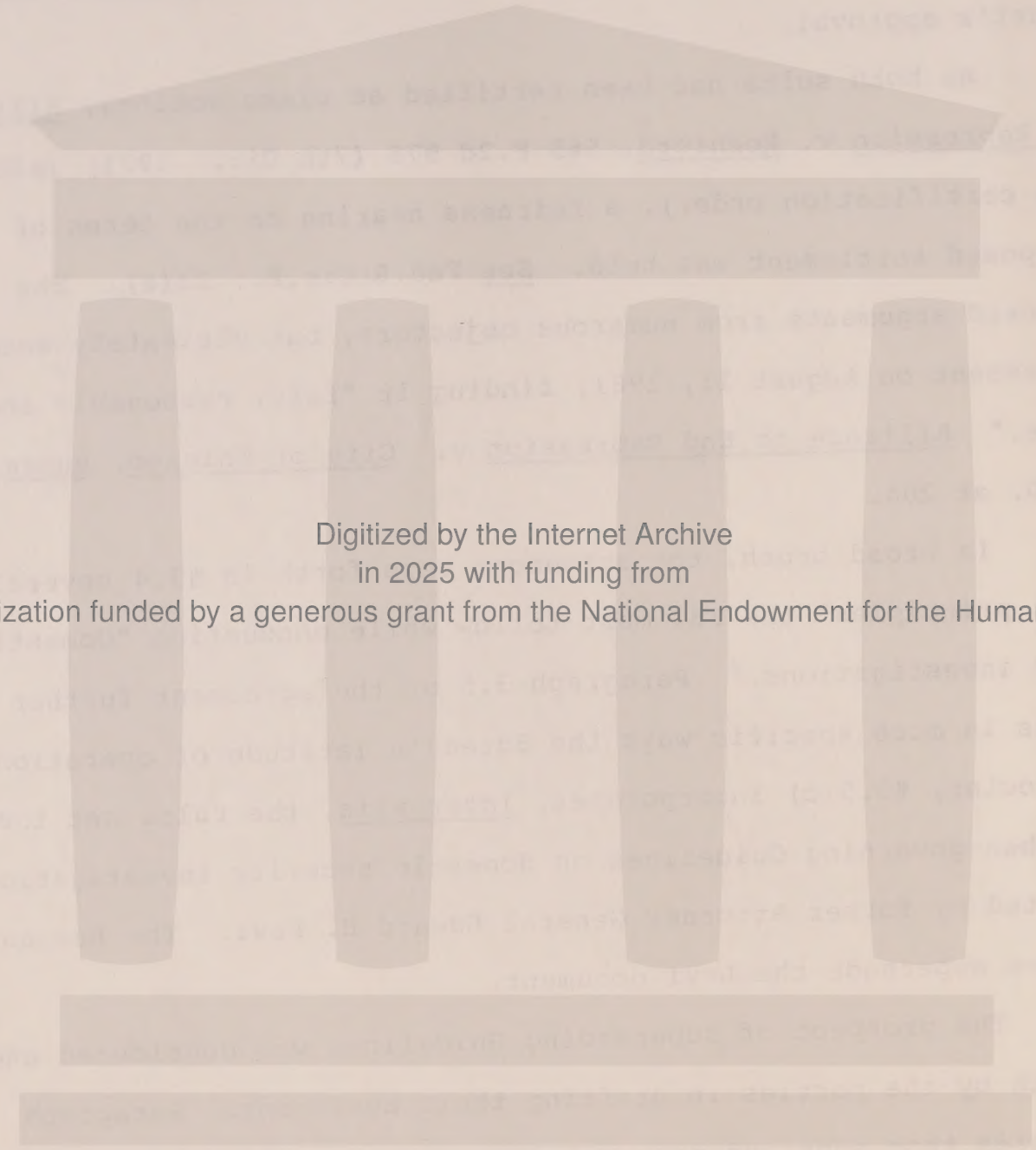
2/ The "federal defendants" are specifically listed at 91 F.R.D. 186.

Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 186. After many years of "sharply contested" litigation, id. at 187, the parties proposed in late 1980 a settlement agreement for the court's approval.

As both suits had been certified as class actions, Alliance to End Repression v. Rochford, 565 F.2d 975 (7th Cir. 1977) (affirming the certification order), a fairness hearing on the terms of the proposed settlement was held. See Fed.R.Civ.P. 23(e). The court heard arguments from numerous objectors, but ultimately entered the agreement on August 11, 1981, finding it "fair, reasonable and adequate." Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 204.

In broad brush, the agreement sets forth in ¶3.4 several "general principles" the FBI must follow while conducting "domestic security investigations." Paragraph 3.5 of the agreement further restricts in more specific ways the Bureau's latitude of operation. In particular, ¶3.5(c) incorporates, inter alia, the rules set forth in the then-governing Guidelines on domestic security investigations promulgated by former Attorney General Edward H. Levi. The Reagan Guidelines supersede the Levi document.

The prospect of superseding Guidelines was considered and dealt with by the parties in drafting their agreement. Paragraph 3.6(c) holds that superseding regulations must in general be employed in construing ¶3.5(c). However, the final proviso to ¶3.6 makes explicit that "future or amended written Departmental or Bureau regulations, guidelines or other procedures, or conduct relating to



the use of investigative techniques described in Paragraph 3.5 shall be in accordance with the principles stated in Paragraph 3.4, and the applicable provisions of federal statutes and the United States Constitution." Because of this caveat, the court dismissed the objection voiced at the settlement hearing "that the proposed FBI settlement rests on government assurances or on Attorney General Guidelines which can be unilaterally withdrawn. It does not. The FBI agreement rests on permanent principles (¶3.4) which govern Justice Department and FBI procedures and conduct in Chicago, and which are subject to independent, external construction and enforcement by this Court. (¶¶5.1 and 5.2) [authorizing, inter alia, petitions by any plaintiff "for an appropriate order to enforce the Stipulation."]" Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 200-01. At oral argument on the present motions, the Government acknowledged that it is within the court's power to enjoin the implementation within Chicago of the new Guidelines to the extent they embody standards for action inconsistent with those established by the settlement agreement.[3/] The court will now

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3/ There can be no doubt that the plaintiffs have standing to mount the sort of facial challenge outlined in the text. Paragraph 3.6 of the agreement flatly prohibits the promulgation of new Guidelines (to the extent they pertain to Chicago) if the principles they contain conflict with those found in ¶3.4. In the language of the agreement, such Guidelines "shall be in accordance with the principles stated in Paragraph 3.4." (emphasis added) As the court previously remarked, "[u]nder the final proviso to ¶3.6, future Justice Department and FBI regulations, guidelines, procedures and conduct relating to investigative techniques described in paragraph 3.5 must comply with these principles." Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 197

address whether this is in fact the case.[4/]

II.

Paragragh 3.4(a) of the agreement explicitly bars the FBI from "conduct[ing] an investigation solely on the basis of activities protected by the First Amendment of the Constitution of the United States, or on the lawful exercise of any right secured by the Constitution or laws of the United States." The Reagan Guidelines encourage violations of this norm by permitting investigations to commence solely on the basis of a target's exercise of protected First Amendment rights.

The reasoning leading to this conclusion begins with section III.B.1.a. of the new Guidelines which provides:

> A domestic security/terrorism investigation may be initiated when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States. The standard of "reasonable indication" is identical to that governing the initiation of a general crimes investigation under Part II. In determining whether an investigation should be conducted, the FBI shall consider all of the circumstances including: (1) the magnitude of the threatened harm; (2) the likelihood it will occur; (3) the immediacy of

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Footnote Continued

(emphasis added). Thus, plaintiffs have suffered injury-in-fact by the very promulgation of the new Guidelines, assuming of course that the allegations of facial inconsistency are in fact correct. Under such circumstances, defendants have breached an obligation owed directly to the plaintiffs under the terms of the agreement.

4/ The full text of paragraphs 3.4, 3.5, and 3.6 of the settlement agreement are reproduced in the Appendix following this opinion.

> the threat; and (4) the danger to privacy and free expression posed by an investigation.

The cross-referenced standard of "reasonable indication" (section II.C.(1))

> is substantially lower than probable cause. In determining whether there is a reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or impending violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

Section I of the Guidelines -- entitled "General Principles" -- offers further guidance as to when the requisite "objective, factual basis" for investigation is present:

> In its efforts to anticipate or prevent crime, the FBI must at times initiate investigations in advance of criminal conduct. It is important that such investigations not be based solely on activities protected by the First Amendment or on the lawful excercise of any other rights secured by the Constitution or laws of the United States. When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation under these Guidelines may be warranted unless it is apparent, from the circumstances or context in which the statements are made, that there is no prospect of harm.

Plainly read, the final sentence of the passage last quoted allows investigations when (1) the target "advocate[s] criminal activity"; and (2) it is not "apparent . . . that there is no prospect of harm." Much of the advocacy covered by this standard, however, falls within the protective shield of the First Amendment.

Brandenburg v. Hayes, 395 U.S. 444, 447 (1969) (per curiam), teaches that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The standard embraced by the Reagan Guidelines is more lenient in three respects. First, under the Guidelines, the feared "harm" need not be, as it must under Brandenburg, "imminent."[5/] Second, and also contrary to Brandenburg, the feared "harm" need not be "likely."[6/] Finally, the speech need not be "directed" (i.e., intended)[7/] to cause imminent, lawless action.

5/ This fact is clearly apparent from the very lack of any "imminence" requirement in the passages quoted in the text. Moreover, in an "Airtel" (a form of internal FBI memorandum) dated March 17, 1983, FBI Director William H. Webster further remarked that the new Guidelines "should eliminate any perceptions that actual or imminent commission of a violent crime is a prerequisite to investigation." (See Exhibit B to the Federal Defendants' Memorandum in Opposition to the Alliance Plaintiffs' Motion)

6/ Indeed, under a literal reading of the statement of "General Principles," an investigation may be warranted even if there exists only "some" prospect of harm, however small. In the "Airtel" cited in note 4, supra, Director Webster narrowed the Guidelines' language somewhat, stating that an investigation should not commence unless "the statement of advocacy taken in context presents a credible threat of harm." (emphasis added) This interpretation does not eliminate the gap between the Reagan Guidelines and Brandenburg. Many threats may be "credible," but not "likely."

7/ See Hess v. Indiana, 414 U.S. 105, 109 (1973) (per curiam).

To the extent, then, that the statement in paragraph 3.4 of the settlement agreement proscribing investigations "solely on the basis of activities protected by the First Amendment" means "solely on the basis of activities protected under Brandenburg," plaintiffs are clearly entitled to relief. The response pressed in the Government's briefs (but not in oral argument) is that this equation should not be drawn. The Brandenburg decision dealt with attempts by the state to punish speakers through criminal sanctions. The Reagan Guidelines, by contrast, deal only with the "more limited" power to investigate. Thus, according to the Government, an activity may be "protected" from punishment, but not from investigation.

As a matter of "pure" constitutional law, this line of argument may or may not have validity. The court expresses no opinion on this question since it is simply irrelevant. The present proceedings were not brought to vindicate First Amendment rights per se. The court is hearing an enforcement proceeding authorized by a settlement agreement, and it therefore follows that the issue is whether the promulgation and implementation within Chicago of the Reagan Guidelines violate the rights conferred by the agreement, not whether such activity violates the plaintiffs' rights under the Constitution. In other words, to the extent the agreement affords protection greater than that demanded by the Constitution,[8/]

8/ Indeed, both the objectors and the plaintiff proponents have represented to the Court that the FBI and the Justice Department, in pending litigation elsewhere, currently assert that the Constitution does not prohibit them from engaging

plaintiffs may be entitled to prevail, whatever the outcome of the "pure" constitutional analysis.9/ The phrase "protected by the First Amendment" found in paragraph 3.4, though it refers by its very terms to a provision of the Constitution, cannot be construed in the abstract. It is to be given the meaning intended by the parties when they signed their agreement.

The terms of the Joint Motion and Stipulation containing the settlement agreement clearly indicate that the questioned provision in paragraph 3.4 incorporates the Brandenburg standard. Paragraph 3.1 of the Joint Motion states that both parties entered into the settlement on the basis of the "understanding of [various Governmental regulations, including in particular the Levi Guidelines] reflected in ¶2.2." In ¶2.2 the plaintiffs expressed their view, confirmed through extensive discovery, that the Levi Guidelines were "not intended to permit domestic security investigations of groups which advocate the necessity for violent revolution at some time in the indefinite future, but which do not now engage in serious crimes or violence or advocate imminent serious crime or violence."

Footnote Continued
in practices which would be prohibited in Chicago by the principles of the settlement here.

Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 198.

9/ On the other hand, even if the agreement provides less protection than the Constitution, plaintiffs might once again be entitled to relief, but not in this proceeding. Raising an argument directly under the Constitution would entail bringing a separate lawsuit, not a proceeding to enforce a settlement agreement. At oral argument, plaintiffs' counsel agreed with these sentiments.

The plaintiffs believed in short that the Levi Guidelines embraced the Brandenburg test (a point expressly made in testimony -- cited in the Joint Motion -- before Congress by a Deputy Assistant Attorney General). The plaintiffs further believed that, so construed, the Levi Guidelines were "consistent with the principles of Paragraph 3.4 below." Thus, one of the understandings "reflected in ¶2.2" was that the phrase "protected by the First Amendment" found in ¶3.4 incorporated the test enunciated in Brandenburg. And, as noted before, both parties entered into the agreement on the basis of this understanding.

In arguing for a contrary construction, the Government relies wholly on two letters it wrote to the court during the fairness hearings on the settlement. These letters express the view that "advocacy of illegal conduct, however general or unspecific in nature, is not immune from investigation." But as the court made clear in its opinion approving the settlement, the parties' unilateral "interpretations of the principles expressed to date are not binding. All that is binding now is the language of the document; the only binding interpretations will be made later -- by the Court -- in the context or real disputes." Alliance to End Repression v. City of Chicago, supra, 91 F.R.D. at 200.

Moreover, it is significant that in drafting their agreement, the parties chose to employ a phrase -- "protected by" -- that is often used in First Amendment litigation to embrace the meaning ascribed by plaintiffs. The two letters cited by the Government, both written after the agreement was signed, do not justify a holding that an unusual and different meaning was intended.

In sum, the court finds that the settlement agreement embraces the priniciples of Brandenburg as the test for initiating investigations. The court further finds that the Reagan Guidelines authorize investigations on much lesser showings. Plaintiffs are entitled to relief, and the only question that remains on this phase of the case is the form it will take. Plaintiffs initially sought a preliminary injunction, but as defendants themselves point out in their brief, there is no reason not to make a permanent ruling now.[10/] The court has found a facial inconsistency between the Guidelines and the agreement. The parties sharply disagreed over the legal meaning of the agreement, and the court has ruled. No further factual or legal issues remain to be resolved on this issue, and the value of further proceedings is accordingly difficult to detect. A permanent injunction will issue. See Fed.R.Civ.P. 65(a)(2).

III.

With respect to four of the remaining challenges to the Guidelines, a different form of dispute has emerged among the parties. As to these points, there is little, if any, disagreement as to the type of conduct permissible under the agreement. The disagreement centers instead over the wording of the Guidelines. The Government asserts that the challenged language, as interpreted by the FBI,

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10/ Clearly, some form of injuctive relief is needed, as there is no adequate remedy at law to rectify the harm suffered by plaintiffs. The court can conceive of no meaningful way to calculate whatever damages might be due. Moreover, the public interest in enjoining the Government to live by its agreements is patent.

does nothing more than authorize the type of behavior all concede is allowable. The plaintiffs are not so sanguine, and fear that at some future point in time the defendants will exploit the allegedly "loose" language in the Guidelines to the hilt, and thereafter engage in conduct forbidden by the agreement.

The court will not grant plaintiffs' request for relief on this phase of the case for the simple reason that the court is not convinced that the challenged provisions mean anything more than what the FBI now represents. The defendants have made showings, both through the representations of counsel and through the documents tendered as exhibits to the defendants' brief, that the Administration does not read the disputed passages in the way plaintiffs fear. Future discovery may cast doubt on these assertions, but at present there is no basis for the court to doubt the defendants' words. As there is thus no basis upon which to conclude that the settlement agreement has been or is likely to be violated, injunctive relief is neither required nor appropriate. Courts do not lightly tread into the realm of the Executive Branch, especially when concerns of national security are implicated.

In reaching this conclusion, the court has carefully considered and rejected each of the arguments pressed by the plaintiffs as to why the FBI should be required to place its "narrowing constructions" explicitly in the Guidelines, and not simply in internal memos and briefs. Plaintiffs first assert that ¶3.6 of the settlement agreement requires that the Guidelines <u>themselves</u> comport with the priniciples in ¶3.4. Second, plaintiffs

fear that the FBI's "informal" assurances might change at some future point, and without notice. They recognize that even Guidelines can be revoked (as the Levi Guidelines were), but assert that such actions by their nature attract great attention and notice. Finally, it is charged that in the First Amendment realm, the allegedly imprecise drafting found in the Guidelines simply will not do. Precision of regulation is needed. Otherwise, the exercise of rights may be chilled by the fear of what the assertedly vague language could mean.

The first point clearly lacks merit. The documents and briefs filed with this court have no independent significance; they are simply aids for interpreting the Guidelines. The only reason they were introduced was to establish what the Guidelines themselves mean.

As to the second point, it is simply too speculative to form a basis for relief. Moreover, should the Government's interpretation of the Guidelines change, the court fully expects to be informed. The court is expressly relying upon the representations made thus far as to the manner the Government will construe the disputed provisions, and has no doubt that counsel for the Government will inform the court of any change in the Government's position.[11/]

11/ For the same reason the court declines to rule for plaintiffs on the basis of their assertion that the FBI "cannot be trusted" since the Bureau has in the past "always" interpreted its restrictions expansively once "the heat was off."

The "chilling effect" argument is simply out of place. As pointed out before, the court is concerned at this moment with contractual rights, not with First Amendment rights per se. Thus, plaintiffs' argument is cognizable only to the extent plaintiffs are contractually entitled not to be "chilled" under any circumstances. They are not. The contract plaintiffs signed guarantees that they will not be subjected to various forms of investigation, and that the defendants will not promulgate documents inconsistent with these precepts; it does not afford blanket protection from being inadvertently "chilled" in some way. In any event, much of the "chilling effect" problem can be ameliorated by the simple expedient of having the court list the disputes that have arisen, and the Government's representations of what it believes the provisions at issue to mean. These disputes are as follows:

(1) The "General Principles" statement notes that "[n]othing in these Guidelines is intended to prohibit the FBI from collecting and maintaining publicly available information consistent with the Privacy Act." Plaintiffs fear that the FBI might maintain a dossier on controversial groups that do not qualify for a full (or even preliminary, see below) investigation. Director Webster's "Airtel" temporarily limits, pending further study, the "collection of publicly available information to cases under preliminary inquiry or full investigation in accordance with the Guidelines." In light of the court's prior comments, it should go without saying that if later study results in a new policy, the court expects to be informed.

(2) Section III.B.1.c. authorizes "the collection of information about public demonstrations by enterprises that are under active investigation pursuant to paragraph [III.]B.1.a. above." The fear here is that the FBI might not confine its surveillance to the group already under

investigation, but might instead investigate other groups that appear at the demonstration as well. The FBI maintains that the former, more restrictive interpretation will be followed.

(3) Section III.B.3.a.(1) allows for the investigation of both "members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise." Plaintiffs theorize that the "acting in furtherance" language is so broad it could even apply to, among others, lawyers who defend revolutionaries on trial for their prior acts. The FBI represents that individuals lawfully excercising their rights, such as the lawyer, are not covered.

(4) Section IV.B.3. states that "[u]ndisclosed participation in the activities of an organization by an undercover employee or cooperating private individual in a manner that may influence the exercise of rights protected by the First Amendment must be approved at FBIHQ, with notification to Department of Justice." According to plaintiffs, this provision countenances even deliberate attempts to influence a target's First Amendment activity, provided only that the necessary approval is obtained. Compare ¶3.4(b) of the agreement (banning the use of "any technique designed to impair [plaintiffs'] lawful and constitutionally protected political conduct"); ¶3.5 of the agreement (banning "any unlawful disruption or harassment of the lawful activities of any United States person.") Director Webster's "Airtel," however reveals that the challenged provision "does not grant authority to influence rights protected by the First Amendment. It is intended to be a safeguard to insure that our investigations do not unintentionally influence the exercise of those rights." So construed, the challenged language acts as an extra safeguard, over and above that already provided by the agreement.

IV.

The final challenge concerns the use of informers and infiltrators during "preliminary inquiries." Such inquiries --

which are geared solely to determining whether a full-scale investigation is warranted (section II.B.(1)) -- may commence if the FBI "receive[s] information or an allegation not warranting a full investigation -- because there is not yet a 'reasonable indication' of criminal activities -- but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads." (Id.) Sections II.B.(4)-(6) describe the types of investigative techniques that may be used during this initial phase. The final proviso to section II.B.(6) makes clear that "highly intrusive" techniques are permissible "only in compelling circumstances and when other investigative means are not likely to be successful." The wording of Director Webster's "Airtel" indicates, however, that the development of new informants and infiltrators does not fall within the "highly intrusive" category. Accordingly, this technique may be employed if authorized by "a supervisory agent." (section II.B.(6)) Such agents "should consider whether the information could be obtained in a timely and effective way by less intrusive means." (section II.B.(4))

Plaintiffs claim that the FBI has violated the requirements of ¶3.4(c) of the settlement accord by not subjecting the use of informants and infiltrators to the more stringent requirements governing "highly intrusive" techniques. Paragraph 3.4(c) obligates the FBI to act "with minimal intrusion consistent with the need to collect information or evidence in a timely and effective manner, and [to] conduct investigations in a manner reasonably designed to minimize unnecessary collection and recording of information about the lawful exercise of First Amendment rights."

To hold for the plaintiffs the court must thus conclude that preliminary inquiries will be conducted in a manner violative of the principles set forth in ¶3.4(c) due to the FBI's failure to categorize the use of informants and infiltrators as "highly intrusive." However, there is simply no evidence to sustain such a charge, and the court is not willing to assume that the FBI will pay only lip-service to the admonitions of section II.B.(4) quoted above. As before, discovery may reveal a much different picture. But at present, plaintiffs have not shown enough to prevail.

V.

For the reasons stated, defendants are hereby permanently enjoined from implementing within the City of Chicago the following provision found in the Attorney General's Guidelines on General Crimes, Racketeering Enterprises and Domestic Security/Terrorism Investigations promulgated March 7, 1983:

> When, however, statements advocate criminal activity . . an investigation under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

In all other respects, plaintiffs' motions for temporary relief are denied. Discovery should commence promptly. Hearings on the remaining requests for a permanent injunction will begin at 11:00 a.m. on June 27, 1983.

It is so ordered.

Susan Getzendanner
United States District Judge

April 18, 1983

3.4. The parties agree that the following general principles apply to FBI activities relating to the domestic activities of United States persons:

(a) The FBI, in conducting domestic security investigations and inquiries, shall be concerned only with conduct and only such conduct as is forbidden by a criminal law of the United States, or by a state criminal law when authorized by federal statute. The FBI shall not conduct an investigation solely on the basis of activities protected by the First Amendment of the Constitution of the United States, or on the lawful exercise of any right secured by the Constitution or laws of the United States.

(b) The FBI, in investigating United States persons, shall not employ any technique designed to impair their lawful and constitutionally protected political conduct or to defame the character or reputation of a United States person.

(c) The FBI shall conduct its investigations with minimal intrusion consistent with the need to collect information or evidence in a timely and effective manner, and shall conduct investigations in a manner reasonably designed to minimize unnecessary collection and recording of information about the lawful exercise of First Amendment rights

3.5. In return for the release of all claims, as more fully set forth in Paragraph 3.8, below, the Attorney General and the Director of the FBI, on behalf of themselves, their successors, and their subordinates, agree that:

(a) Any electronic surveillance activities in the City of Chicago shall be in accordance with the Constitution and applicable federal statutes, including 18 U.S.C. §§ 2510-20 (1976) and 50 U.S.C. §§ 1801-11 (Supp. II 1978).

(b) They shall not conduct in the City of Chicago any warrantless unconsented physical searches in domestic security investigations, any unlawful unconsented physical searches of premises or property of U.S. persons in foreign intelligence collection or foreign counterintelligence investigations, any unlawful entries that constitute searches under the Fourth Amendment, or any unlawful disruption or harassment of the lawful activities of any United States person. Nothing in this subsection shall prohibit a warrantless search in circumstances in which a warrant is not required to conduct a search for law enforcement purposes. As used in this subsection the term "unconsented physical searches" does not apply to a search for the purpose of placing, maintaining, or removing authorized electronic surveillance devices or conducting surveys in connection therewith; or to the receipt by the FBI of information, property or materials furnished by individuals acting on their own initiative, without direction or request by the FBI, regardless of the manner of acquisition.

(c) Any of the following investigative activities in domestic security investigations or in foreign intelligence collection or foreign counterintelligence investigations concerning U.S. persons shall comply with all applicable federal statutes, Presidential Executive Orders, written Departmental or Bureau regulations, guidelines and other procedures established in accordance with such statutes or Executive Orders, including but not limited to the procedures and instructions listed in ¶ 2.1 above. The statutes, Executive Orders, regulations, guidelines and procedures referred to in the preceding sentence are those in effect on the effective date of this Joint Stipulation.

(1) Physical or photographic surveillance of any U.S. person in the City of Chicago not employed by the Department of Justice.

(2) Participation in any organization in the City of Chicago by FBI personnel or informants or assets without disclosing their intelligence affiliation to appropriate officials in the organization; and

(3) The acquisition, dissemination and storage of information about U.S. persons in the City of Chicago not employed by the Department of Justice.

3.6 Any provision of Paragraph 3.5 shall be superseded by:

(a) Any future federal statute or Presidential Executive Order specifically authorizing or directing the Attorney General or the Director of the FBI, or their subordinates, to utilize any investigative techniques described in Paragraph 3.5, or

(b) Any future written Departmental or Bureau regulation, guideline or other procedure relating to the use of the investigative techniques described in Paragraph 3.5, which is established in accordance with and is consistent with such statute or Presidential Executive Order, or

(c) Any future or amended written Departmental or Bureau regulation, guideline or other procedure relating to the use of the investigative techniques described in Paragraph 3.5(c), which is established in accordance with and is consistent with an existing statute or Presidential Executive Order or pursuant to the Attorney General's supervisory responsibilities to manage and direct the activities of the Department of Justice,

Provided, that future or amended written Departmental or Bureau regulations, guidelines or other procedures, or conduct relating to the use of investigative techniques described in Paragraph 3.5 shall be in accordance with the principles stated in Paragraph 3.4, and the applicable provisions of federal statutes and the United States Constitution.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANCE TO END REPRESSION, et al., Plaintiffs, v. CITY OF CHICAGO, et al., Defendants.	No. 74 C 3268
AMERICAN CIVIL LIBERTIES UNION, et al., Plaintiffs, v. CITY OF CHICAGO, et al., Defendants.	No. 75 C 3295

AGREED ORDER, JUDGMENT AND DECREE

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PRELIMINARY STATEMENT OF PRINCIPLES

The named plaintiffs in these two actions (who are listed in Appendix A) having filed their complaints herein, and said plaintiffs (on behalf of themselves and the classes they represent herein as determined by previous Orders of Court and set out in Appendix B) and the City of Chicago defendants (named in Appendix C) having consented to the entry of this Agreed Order, Judgment and Decree as to such parties, without trial and without adjudication of any allegation in the complaints or any issue of fact with respect to the alleged commission by said defendants of any unconstitutional, unlawful or wrongful act, and without this Agreed Order, Judgment and Decree constituting evidence of or an admission by any defendant with respect to any issue of fact herein or the commission of any unconstitutional, unlawful or wrongful act;

This Court having jurisdiction of the parties to this Agreed Order, Judgment and Decree and of the subject matter of these actions under Sections 1331 and 1343(3) of Title 28 of the United States Code; and,

The parties to this Agreed Order, Judgment and Decree having agreed upon the following general principles which govern the constitutional protection of individual rights, the law enforcement duties of the City defendants, and City policy concerning First Amendment conduct:

A. Purpose of the Statement of Principles.

By this statement of principles, it is not the intent of the parties to make a complete statement of the applicable constitutional and state law as it has been interpreted by the courts; but it is the intent, by this joint statement, to manifest the strong agreement of the parties on principles which govern their conduct, in the expectation that as the general principles are accepted and understood, the day-to-day pattern of conduct will more readily conform to the principles.

B. Constitutional Protection of Individual Rights.

1. The First Amendment of the U.S. Constitution protects the rights of a person to freedom of speech, press, assembly, petition and religion, including without limitation the rights to hold, communicate and receive ideas and beliefs, to speak and dissent freely, to associate for the advancement of litigation, to write and publish, to advocate and organize concerning public policy and social issues and to associate publicly and privately with other persons concerning political and social issues.

2. The Fourth Amendment of the U.S. Constitution protects the rights of a person to be secure in person, house, papers and effects against unreasonable search

and seizure, and the right to be secure in communications which are engaged in with reasonable expectation of privacy. This Amendment protects the innocent and the guilty alike against governmental intrusion not justified by an appropriate governmental interest or function.

3. The Fourteenth Amendment guarantees to a person equal treatment under the law unless an appropriate governmental interest or function justifies an exception.

C. The Importance of Effective Law Enforcement.

1. It is the duty of the Chicago Police Department to aggressively enforce the penal and regulatory laws of the State of Illinois and ordinances of the City of Chicago. The Department must apprehend persons who have violated the criminal law and must, by lawful means, anticipate and endeavor to prevent the commission of crime.

2. It is the duty of the Chicago Police Department to protect the physical safety of visiting public officials and other dignitaries.

3. It is the duty of the Chicago Police Department in connection with public gatherings to maintain the public peace by enforcing the regulatory statutes and

ordinances of the State and City and to protect the exercise of Constitutional rights of all persons.

4. It is the duty of the City of Chicago and its Police Department to respect, to affirmatively protect and to minimize interference with the Constitutional rights of all persons.

D. City Policies Concerning First Amendment Conduct.

1. No investigation shall be conducted for political, religious or personal reasons. First Amendment information may be gathered only for valid governmental purposes in accordance with this Judgment.

2. No person shall be prejudiced in dealings with government because of, nor disrupted in the exercise of, the person's political beliefs, associations or other First Amendment conduct.

3. All employees and agents assigned to or engaged in investigative activity shall be trained and supervised to perform their duties in accordance with the law.

NOW, THEREFORE, upon consent of the parties and approval of the court, it is hereby ORDERED, ADJUDGED and DECREED:

I. PERMANENT INJUNCTION

The City of Chicago, the City defendants, their officers, employees and agents, and all persons in active concert or participation with them who receive actual notice of this Judgment, are hereby permanently enjoined as follows:

1. SUMMARY OF THE SCOPE OF THIS JUDGMENT; BASIC DEFINITION.*/

1.1 The principal provisions of this Judgment apply only to investigative activity (as defined in 1.2 below p.10) that is directed toward First Amendment conduct (as defined in 1.3-1.5 below p.10).

1.1.1 This Judgment does not apply to investigative activity that is not directed toward First Amendment conduct or that merely includes incidental references to such conduct. It is the expectation of the parties, for example, that the great majority of police activity

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*/ The summary in Part 1 is for the purpose of facilitating understanding of the detailed provisions of the Judgment; the latter are controlling in the event of uncertainty of interpretation or scope of the Judgment. Terms underscored are defined in Part 1 or at appropriate points in the text. An index of definitions appears in Part 6, p.34.

(e.g., investigation of property crimes, personal violence, narcotics and gambling, as well as routine patrol and on-view enforcement action) will not be affected by this Judgment.

1.1.2 This Judgment prohibits any investigation of First Amendment conduct in the absence of one of the valid governmental purposes specified herein (e.g., criminal investigation) and also prohibits investigation or disruption of a person because of the person's First Amendment conduct. It is the expectation of the parties, for example, that systematic investigation and record keeping about political and social action organizations unrelated to criminal conduct is prohibited by this Judgment.

1.1.3 This Judgment permits, but regulates, investigative activity that is directed toward First Amendment conduct in the course of performing a valid governmental function specified herein. The regulatory provisions of the Judgment are intended to permit functions such as criminal investigations (including investigations of criminal activity in furtherance of political goals) to be conducted effectively while controlling and limiting their impact on First Amendment conduct. The regulatory provisions generally require that investigative activity that is directed toward First Amendment conduct have a valid purpose, a reasonable factual basis and supervisory

authorization; that the impact on First Amendment conduct be minimized; and that the retention and dissemination of First Amendment information be strictly limited.

1.1.4 This Judgment acknowledges the propriety of criminal intelligence investigations as a law enforcement technique, including the collection, analysis and dissemination of information about systematic criminal conduct. This Judgment applies to such investigations only when they are directed toward First Amendment conduct.

1.1.5 This Judgment does not address or affect the use of covert police investigative techniques, such as informants, except when such techniques are directed toward First Amendment conduct.

1.2 Investigative activity means the collection of information by any means, including its acquisition from another agency or from another unit within the same agency, or the recording, filing, retention, indexing or dissemination of information.

1.3 Investigative activity is directed toward First Amendment conduct when it does or foreseeably will (other than by incidental reference):

1.3.1 include the collection or handling of information about First Amendment conduct;

1.3.2 have as a subject or target a person who is actively and substantially engaged in First Amendment conduct, where the investigative activity relates to that conduct; or

1.3.3 interfere with First Amendment conduct.

1.4 Investigative activity is not directed toward First Amendment conduct merely because it includes relevant incidental references to First Amendment conduct. An incidental reference is an occasional or isolated reference to First Amendment conduct where:

1.4.1 the conduct is not itself a significant issue in or focus of an investigation; and

1.4.2 the reference is relevant to the law enforcement purpose of the investigative activity.

Examples of incidental references include information that a community organization was a burglary victim, information that a person reasonably suspected of narcotics crimes might be found at a certain church or political organization, or a name and address index maintained by a police or other city official of persons dealt with in the course of overt community relations activity or a file of correspondence with such persons concerning such activity.

1.5 First Amendment conduct means conduct protected by the rights under the First Amendment of the Constitution of the United States to freedom of speech, press, assembly, petition and religion, including but not limited to the following rights:

1.5.1 the right to hold ideas or beliefs concerning public or social policy, or political, educational, cultural, economic, philosophical or religious matters;

1.5.2 the right to communicate or receive such ideas or beliefs, publicly or privately, orally, in writing or by symbolic means;

1.5.3 the right to associate and assemble publicly or privately with other persons concerning ideas or beliefs about public or social policy, or political, educational, cultural, economic, philosophical or religious matters (but not a right to associate or assemble for purposes unrelated to the right to hold and express such ideas or beliefs);

1.5.4 the right to advocate, for purposes related to such ideas or beliefs, "the use of force or of law violation, except where such advocacy is directed to inciting or producing imminent lawless conduct and is likely to incite or produce such action," Brandenburg v. Ohio, 395 U.S. 444 (1969); with respect to the above, it is the duty of the Chicago Police Department, when it learns of an instance of such advocacy of the use of force or of law violation, to make prudent and reasonable inquiry to determine whether it is an exercise of the expression of ideas only or whether it is directed to inciting or producing imminent lawless conduct and likely to incite or produce

such action; this inquiry shall be conducted in accordance with §3.2.5;

1.5.5 the right to advocate alternative systems of government;

1.5.6 the right to petition the government or governmental officials for redress of grievances; and,

1.5.7 the right to associate for the purpose of seeking and giving legal advice as well as advancing litigation.

1.6 First Amendment information means information about a person's First Amendment conduct.

2. PROHIBITIONS THAT APPLY TO ALL AGENCIES OF THE CITY OF CHICAGO.

No agency or agent of the City of Chicago shall:

2.1 investigate or prosecute a person, solely because of the person's First Amendment conduct, or selectively for political, religious, or personal reasons (except as permitted by law in the discipline of public employees);

2.2 disrupt, interfere with or harass any person because of the person's First Amendment conduct;

2.3 gather any First Amendment information by intrusive methods except pursuant to Part 3.6 of this Order (p.27), or by illegal methods, or receive or maintain information so gathered by others;

2.4 authorize, assist or encourage any person to violate this Order, or to commit an act that would violate this Order if committed by a City agent; or,

2.5 conduct any investigation, or maintain any file or file system, directed toward First Amendment conduct that the Police Department may not conduct or maintain under the provisions of Part 3 of this Judgment.

3. POLICE DEPARTMENT INVESTIGATIONS.

Police Department employees and agents may engage in investigative activity directed toward First Amendment conduct ONLY in a criminal, dignitary protection, public gathering or regulatory investigation that is conducted in compliance with Part 3 of this Judgment.

3.1 Basic Procedures for Investigations. In every criminal, dignitary protection, public gathering or regulatory investigation that is directed toward First Amendment conduct:

3.1.1 First Amendment information shall not be gathered nor become part of any investigative file unless it is so necessary to and inseparable from the purpose of the

investigation that its gathering and retention cannot be avoided. First Amendment information shall not be gathered which violates the confidentiality of attorney-client communications.

3.1.2 Minimization procedures shall be employed with respect to First Amendment conduct. Minimization means:

3.1.2.1 to take every reasonable precaution to avoid gathering information about, or interfering with, First Amendment conduct, and when it cannot be avoided to follow a conscious course of conduct that reduces, as much as possible, the impact on First Amendment conduct.

3.1.2.2 to use the least intrusive methods of effectively conducting investigative activity about First Amendment conduct.

3.1.2.3 For example, unless unavoidably necessary to the investigation of a reasonably suspected crime, no information shall be gathered about a political group to which a criminal suspect belongs or about other members of the group or about other persons attending political meetings where the suspect is present, including their identities, statements and photographs.

3.1.3 Intrusive Methods. No First Amendment information shall be gathered by intrusive methods, except in compliance with Part 3.6 (p.27) of this Judgment.

3.1.4 Authorization. The investigation shall not be initiated unless authorized in writing by the Superintendent of Police, or by a member of his executive staff [i.e., Deputy Superintendents or Executive Assistants to the Superintendent] designated by him, in the following manner:

3.1.4.1 The written authorization shall specify in detail the factual basis for the investigation; the apparent criminal offense or other specific reason for the investigation; the person(s) to be investigated, if known; the investigative methods to be used; minimization measures to be employed; and the duration of investigation ([not to exceed 30 days]).

3.1.4.2 The investigation shall not be continued unless the executive reviews and reauthorizes it in the same manner at intervals of not more than [30 days].

3.1.5 Termination. The investigation shall be terminated when its written authorization expires or earlier when:

3.1.5.1 the standard under which it was initiated (e.g., reasonable suspicion of crime) is no longer met; or

3.1.5.2 its purpose has been achieved or the event to which it related (e.g., a public gathering) has taken place.

3.1.6 Security of all First Amendment information shall be strictly maintained. Security of information means that the unit collecting the information makes or permits no dissemination of the information whatsoever except:

3.1.6.1 to a Chicago police officer conducting a criminal investigation in compliance with this Judgment;

3.1.6.2 to a state or federal prosecutor who requests the information for a criminal prosecution;

3.1.6.3 in response to a subpoena;

3.1.6.4 to another governmental law enforcement agency upon its signed written request certifying that the information is needed in a criminal investigation based upon reasonable suspicion of crime, and only if such agency agrees to make no further dissemination of the information except in a criminal prosecution and to destroy or return it when no longer needed; or

3.1.6.5 to the subject of the information when required by legislation or when permitted by departmental policy.

For each dissemination, complete documentation shall be maintained, including the recipient, date, reason, and a copy of the information disseminated.

3.1.7 Purging. Upon completion or termination of an investigation, all information gathered shall be

reviewed, and any First Amendment information (other than incidental references) shall be purged unless there exists reasonable suspicion of criminal activity and some nexus is established showing that the criminal activity is being sheltered under the guise of exercising First Amendment rights.

3.1.7.1 Purging of information means to remove it from all files or documents and place it in a sealed file. No one shall have access to such sealed files except for the purposes of auditing and enforcing compliance with this Judgment; such access shall be limited to persons specifically authorized by the Superintendent of Police, designated representatives of the Chicago Police Board, and persons acting under judicial authority.

3.1.7.2 On an [annual] basis, information in sealed files shall be transferred to a sealed retention file under the personal control of an executive designated by the Superintendent and there retained for [ten years] and then destroyed. The destruction may be delayed if the information is relevant to pending litigation. If the information is relevant to anticipated litigation either party may apply to the Court for appropriate relief.

3.2 Criminal Investigations Directed Toward First Amendment Conduct. Any criminal investigation that is directed toward First Amendment conduct must comply with Part 3.1 and also with the following:

3.2.1 It shall be conducted solely for the purpose of obtaining evidence of criminal conduct that has occurred, is occurring or is about to occur.

3.2.2 It shall not be conducted unless there is reasonable suspicion*/ based on specific and articulable facts that the subject has committed, is committing, or is about to commit a crime.

3.2.3 No First Amendment information other than incidental references shall become part of any investigative file unless some nexus is established showing that criminal conduct is being sheltered under the guise of exercising First Amendment rights.

3.2.4 An investigation may be initiated without the executive authorization required by Section 3.1.4 (p.16), but only if it does not continue more than [24 hours] without the review and written approval of the [section commander or

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*/ Reasonable suspicion is the belief of a reasonably prudent person under the circumstances, based on specific and articulable facts, that investigation should be made to determine whether "probable cause" exists to justify an arrest, a warrant or other appropriate police action. "Reasonable suspicion" is less than the "probable cause" required for an arrest or a warrant, but is an objective standard rather than a subjective "good faith" belief.

equivalent] nor more than [72 hours] without the executive authorization. A report shall be submitted to the executive detailing the basis, purpose and methods of the initial investigation and any particulars in which it is, or has been, directed toward First Amendment conduct. If the executive does not authorize an investigation in accordance with 3.1.4, the report shall be purged.

3.2.5 When the police learn of the advocacy of the use of unlawful force or violence in furtherance of political, religious or other First Amendment ideas, the police may conduct a brief preliminary inquiry as follows:

3.2.5.1 The sole purpose of the inquiry shall be to determine whether the advocacy is an exercise of the expression of ideas only, or whether the advocacy is both --

-- directed to inciting or producing imminent violent conduct, and,

-- likely to incite or produce such action.

3.2.5.2 The inquiry shall follow the same procedures as set out in §3.2.4: [section commander or equivalent] approval within [24 hours]; detailed report to a police executive within [72 hours]; and termination and purging unless the executive authorizes a full investigation based on reasonable suspicion that a crime has occurred, is occurring or is about to occur.

3.2.5.3 In making the inquiry whether there is a reasonable suspicion that a crime has occurred, is occurring or is about to occur, the inquiry shall focus on whether there are facts indicating that the person is currently engaged in conduct preparing for the imminent use of force or violence. Ideological rhetoric is relevant but cannot be the sole basis for a full investigation or for repeated preliminary inquiries. A full investigation shall not be authorized of a person or group which only advocates the use of force without currently engaging in actions that make violence a credible threat.

3.3 Dignitary Protection Investigations. Any dignitary protection investigation that is directed toward First Amendment conduct must comply with Part 3.1 (p.14), and also with the following:

3.3.1 It shall be conducted solely for the purpose of ensuring the physical safety of a visiting public official or other dignitary. It shall commence only after police learn of an anticipated visit, and shall cease upon the visitor's departure or upon notice that the visit will not occur.

3.3.2 A dignitary protection investigation that is directed toward First Amendment conduct shall not be conducted unless the appropriate police executive certifies in writing that there is a reasonable suspicion that the subject(s) of the investigation poses a threat to the physical safety of the dignitary. The certification shall detail the specific and articulable facts upon which the reasonable suspicion is based.

3.3.3 All dignitary protection investigations shall be supervised by one police unit designated by the Superintendent. Information gathered shall be kept by that unit in dignitary protection files separate from all other police investigative files.

3.3.4 Security of First Amendment information shall be maintained, except that information needed to ensure the dignitary's physical safety may be disseminated to the dignitary and to other law enforcement personnel assigned to protect the dignitary.

3.3.5 If the dignitary protection investigation uncovers reasonable suspicion of criminal activity, the information concerning that activity may be transferred to an appropriate police unit for a criminal investigation. If the criminal investigation is directed toward First Amendment conduct, it shall be conducted in accordance with Part 3.2.

3.3.6 Nothing in this Part 3 restricts the on-view enforcement activities of plain clothes officers in connection with dignitary protection.

3.4 Public Gathering Investigations. Any public gathering investigation must comply with Part 3.1 (p.14), and also with the following:

3.4.1 Definition. Public gathering means:

3.4.1.1 any gathering of persons in a public place, or in a place to which the public has reasonable access, for which a permit or notice to police or other government officials is required by legislation; or,

3.4.1.2 any march, demonstration, or rally in a public place, or in a place to which the public has reasonable access, that is reasonably likely to significantly affect traffic or public health or safety.

3.4.2 A public gathering investigation shall be conducted solely for the purposes of preventing substantial interference with traffic in the area contiguous to the public gathering, ensuring adequate public services to protect public health and safety in accordance with applicable penal and regulatory statutes and ordinances, and protecting the exercise of constitutional rights.

3.4.3 All public gathering investigations shall be supervised by one police unit designated by the Superintendent. Information gathered shall be kept in public gathering files separate from all other police investigative files.

3.4.4 A public gathering investigation may be initiated without the written authorization required by 3.1.4 (p.16), but without such authorization may only:

3.4.4.1 gather published announcements of future public gatherings and permit applications in the form specified by City ordinance; and

3.4.4.2 communicate overtly with the organizers of the public gathering concerning the number of persons expected to participate and similar information about the time, place, and manner of the gathering that is necessary for the purposes stated in 3.4.2 above.

3.4.5 No further information may be gathered unless there is reasonable suspicion that the public gathering is likely to produce an imminent and substantial breach of the peace or riot or that the information on a permit application is false, and unless the further investigation is authorized pursuant to 3.1.4 (p.16). The authorization shall certify the specific and articulable facts upon which the reasonable suspicion is based. The investigation shall not gather information about the identity of individual participants in the

public gathering or about the content of the program unless there is compelling necessity to do so.

3.4.6 Security of all First Amendment information shall be maintained. However, it may be disseminated on a need-to-know basis to governmental agencies whose services will likely be needed or directly affected by the public gathering, provided they agree to make no further dissemination and to destroy the information within [30 days] after the gathering occurs.

3.4.7 If the public gathering investigation uncovers reasonable suspicion of criminal activity, the information concerning that activity may be transferred to an appropriate police unit for a criminal investigation. If the criminal investigation is directed toward First Amendment conduct, it shall be conducted in accordance with Part 3.2.

3.4.8 Police presence at a public gathering shall be no greater in nature and extent than reasonably necessary to enforce the criminal laws, to protect the exercise of constitutional rights, to prevent substantial interference with traffic and to protect the public health and safety in accordance with applicable penal and regulatory statutes and ordinances. The police presence shall be planned and organized to avoid discouraging persons from lawfully participating in the public gathering. The police presence may include plain clothes

officers who are present solely for on-view enforcement purposes, as observers and not as participants except in the carrying out of authorized intrusive investigations under Part 3.6 (p.27).

3.5 Regulatory Investigations. Any regulatory investigation that is directed toward First Amendment conduct shall comply with §§3.1.1 - 3.1.3 (p.14), and with the following:

3.5.1 It shall be conducted solely for the purpose of fulfilling regulatory responsibilities as set forth by statute or ordinance (such as processing license applications or conducting traffic accident and missing person investigations).

3.5.2 The requirements of §§3.1.4 - 3.1.7 (p.16) do not apply where First Amendment information is incidental to the regulatory investigation, such as information that a church vehicle is involved in a traffic accident. However, these requirements must be complied with whenever First Amendment information is a significant focus of a regulatory investigation. In this event, security of First Amendment information shall be maintained.

3.6 Intrusive Methods.

3.6.1 Definitions. Intrusive method means any of the following:

3.6.1.1 An informant, which means an agent who collects information without disclosing to the source his function as an agent;

3.6.1.2 An infiltrator, which means an informant who is, or poses or acts as, a member or participant in a group or organization without disclosing to the group or organization and to its members his function as an agent;

3.6.1.3 electronic surveillance or eavesdropping of any kind;

3.6.1.4 a mail cover (acquiring information from the outside surface of mail);

3.6.1.5 a nonconsensual entry or seizure, which means an agent's entry onto a person's premises, or acquisition of a person's private papers, mail or effects or their contents, without a judicial warrant or the person's prior express consent given with knowledge of the agent's function as an agent. Private papers include all papers that a person has not made available to the general public.

3.6.2 A police investigation may use an intrusive method that is directed toward First Amendment conduct only under the following conditions:

3.6.2.1 Other methods are insufficient to effectively obtain information necessary to the investigation;

3.6.2.2 The police executive's written authorization under §3.1.4 (p.16) specifically permits the use of the intrusive method and explains why it is justified;

3.6.2.3 The details of the method's use, including all First Amendment information gathered, are fully documented for review;

3.6.2.4 Judicial warrants are obtained for any nonconsensual seizure of First Amendment information, including such seizures by informants and infiltrators;

3.6.2.5 The use of electronic surveillance or mail cover is in compliance with applicable state and federal statutes and regulations; and

3.6.2.6 Every informant or infiltrator is instructed as to the binding effect of the prohibitions of Part 2 (p.13) and the duties under §§3.1.1 and 3.1.2 (p.14) to avoid or minimize any impact on First Amendment conduct.

3.6.3 Infiltration of a group or organization engaged in First Amendment conduct is permitted only if it meets the requirements of 3.6.2, and in addition:

3.6.3.1 there exists reasonable suspicion that a crime has occurred, is occurring or is about to occur,

and additional information from a reliable inside source is necessary to prevent serious injury to the public or to assure identification and apprehension of the persons engaging in criminal conduct.

3.6.3.2 the Superintendent of Police personally approves the infiltration in writing, by a certification that particularly describes the group to be infiltrated; the crime which has been, is being or is about to be committed by the group or its members; the reasons why it could not be prosecuted or prevented without the infiltration; and the minimization procedures to be used by the infiltrator;

3.6.3.3 the scope and conduct of the infiltration is limited to the specific crime that is suspected, and no First Amendment information (other than incidental references) is gathered; and

3.6.3.4 the infiltration does not continue unless recertified by the Superintendent in the same manner as originally, at intervals of not more than [30 days].

3.6.4 While it is the intention of the parties that the requirements of this Part 3.6 be enforceable both as an injunction and through departmental discipline, it is not the intention of the parties that Part 3.6 create any right to the exclusion or suppression of evidence in a criminal prosecution.

4. IMPLEMENTATION OF THIS JUDGMENT

4.1 The Police Department shall adopt and maintain Department-wide administrative regulations implementing this Judgment (after notice to and consultation with counsel for the plaintiffs). The Department may modify such regulations from time to time, but only after reasonable notice to, and consultation with, the Chicago Police Board and counsel for the American Civil Liberties Union and the Chicago Committee to Defend the Bill of Rights. All such regulations shall be consistent with this Judgment. Violations of such regulations, including by supervisory personnel, shall subject the violator to Departmental discipline.

4.2 All current employees of the Police Department, and all future employees at the time of their hiring, shall be served with a copy of this Judgment. Training with respect to the requirements of this Judgment and the implementing regulations shall be provided:

4.2.1 to new recruits as part of the Police Academy curriculum; and

4.2.2 on a continuing, in-service basis to personnel of the Bureaus of Inspectional, Investigative and Community Services, all district tactical units, and all other units likely to engage in investigative activity covered by this Judgment.

4.3 All employees of the City of Chicago shall be given notice of this Judgment once every five years, in the form of the summary attached hereto as Appendix D, through enclosure in pay envelopes or a similar method. New employees, at the time of their employment, shall be furnished with a copy of the same notice.

4.4 The Superintendent of Police shall annually conduct a departmental audit of the implementation of and compliance with this Judgment and the regulations adopted under §4.1, and submit the audit report to the Mayor, the Police Board, and this Court for filing as a public record. The annual report shall include the number of authorizations issued under Parts 3.2 - 3.5, respectively; the number of infiltration approvals given under §3.6.3; a statistical analysis of the purposes for which authorizations and approvals were granted, the types of unlawful activities involved, the number of arrests and prosecutions based on such investigations, and other meaningful information; a summary of any internal disciplinary complaints concerning compliance with this Judgment or the related Departmental regulations and the findings made and actions taken on such complaints; and a description of other actions taken to implement this Judgment. The Superintendent's report shall not give information that would identify criminal informants or current sensitive criminal investigations, designated by the Superintendent, that might be compromised by disclosure.

5. Auditing and Monitoring Implementation of and Compliance with this Judgment

5.1 The Chicago Police Board shall have the following functions:

5.1.1 To audit, monitor and evaluate compliance with this Judgment, and with administrative regulations adopted pursuant to the Judgment, and to report to the Mayor, the Superintendent of Police and the public concerning its findings.

5.1.2 To consult with and make recommendations to the Mayor, the Superintendent, and other appropriate executive branch officials, from time to time, concerning the implementation and functioning of this Judgment, both to effectuate the purposes of the Judgment and to simplify its administration.

5.2 The Board shall conduct audits and inquiries appropriate to its responsibilities concerning this Judgment. In particular, it shall cause management audits to be conducted, by a national independent public accounting firm, of the implementation of and compliance with this Judgment and the regulations adopted under §4.1. The audit report shall include a description and evaluation of such implementation and compliance, as well as a discussion of any substantial violations observed or detected and any recommendations for improvement of performance that the auditors deem appropriate. Such audits shall be conducted in 1982, 1984, and thereafter at

intervals of not more than five years. The audit report shall be made public, along with any report or recommendations which the Board, the Superintendent or the Mayor wishes to issue. The Board may make and may publish such other reports and recommendations as it deems necessary.

5.3 The Board and the management auditors, for the purposes of §5.1 and 5.2, shall have access to all relevant data in the possession of the city, including without limitation complete documentation of all investigations, except as provided in this paragraph. The auditors shall not have access to information specifically identifying criminal informants, or to current sensitive criminal investigations designated by the Superintendent that might be compromised by disclosure to the auditors (but all documentation of such investigations shall be retained under §3.1.7 to be audited after termination of the investigation.) The auditors shall not disclose any information to anyone but the Board, or to the Superintendent of Police upon his request.

5.4 The Board shall have the following duties and limitations concerning the disclosure of information obtained from City agencies:

5.4.1 The Board shall not disclose, in any manner, details that specifically identify any investigations, except as provided in §5.4.3. However, it may disclose general policy and performance data concerning the implementation of and compliance with this Judgment and the regulations, including paraphrased examples of investigations.

5.4.2 The Board shall not disclose, in any manner, information that would reveal the identity of a criminal informant, compromise an ongoing criminal investigation, or constitute an invasion of a person's privacy.

5.4.3 If the Board learns of any substantial violation of this Judgment, it shall promptly notify the Superintendent of Police (or the Office of Municipal Investigations if the matter involves personnel of a City agency other than the Police Department.) The official notified shall report back to the Board within 30 days what investigation was made and what corrective action was taken.

6. Index to Definitions.

6.1 Definitions appear at appropriate points in the text as follows:

Investigative activity	1.2	p.10
Minimization	3.1.2	p.15
Public gathering	3.4.1	p.23
Purging	3.1.7	p.17
Reasonable suspicion	3.2.2	p.19
Security of information	3.1.6	p.17

6.2 Additional Definitions.

6.2.1 Agent means any officer or employee of the City of Chicago; or any person paid, controlled, or directed by an officer or employee of the city; or any person who is requested by an officer or employee of the city to engage in investigative activity.

6.2.2 Person means any individual, group of individuals, or organization.

6.2.3 Record means any physical or electronic method of retaining information.

II. RETENTION OF JURISDICTION AND ANCILLARY MATTERS

A. Retention of Jurisdiction by the Court. Jurisdiction is retained by the Court for the following purposes.

1. To enable the parties to this Order to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Order, for the enforcement of compliance with the provisions contained herein, and for the punishment of the violation of any such provisions. Application to enforce such provisions or to impose punishment for any such violation may be presented to this Court by any person affected by the conduct complained of. Prior written notice of all such applications and other matters in this action shall be given to counsel for the named parties hereto. Except where emergency relief is sought, seven days written notice shall be given.

2. For the trial and adjudication of the damage claims against the City defendants.

3. The parties recognize that modification of certain procedural provisions of Part III (time periods and specification of authorizing police personnel) may be warranted in the future, on the basis of experience with implementation and administration of this Judgment. Those provisions are set off in brackets in the text of Part III.

Accordingly, after five years from the entry of this Order, the City of Chicago may undertake such modification in the following manner:

a. The City shall serve the proposed modification of the bracketed provision(s) upon counsel for the named plaintiffs, together with a detailed statement of the reasons why the modification is warranted.

b. The parties shall consult for a period of 60 days to determine if the modification can be made by agreement.

c. If agreement is not reached the City may file its proposed modification and statement with the Court, and if no objection is filed by the named plaintiffs the modification shall take effect 30 days after filing.

d. If the named plaintiffs file written objection to the proposed modification within 30 days, the Court shall determine whether the modification should be approved. The Court should approve the modification unless it does not meet the following standards:

   i) it facilitates police administration;

   ii) it is calculated to effectuate and not to thwart the basic purpose of this Judgment;

   iii) it is consistent with the substantive and the remaining procedural provisions of this Judgment; and,

iv) it maintains or increases the effectiveness of the procedure it replaces, provided that an increase of a time period or a decrease of command level for an authorization shall not per se be considered less effective.

B. Final Disposition of Claims for Injunctive Relief Against City Defendants. This Agreed Order, Judgment and Decree constitutes the final disposition of the claims for injunctive relief against the city defendants. The Court expressly finds and determines, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and directs that this Judgment be entered forthwith.

C. Ancillary Matters.

1. The Chicago Police Department intelligence files held in the document depository at Police Headquarters pursuant to this Court's orders of October 14, 1976, and May 4, 1977, shall be retained in the depository under the terms of those Orders until the final disposition of the damage claims against the city defendants and of all claims against the federal defendants, and their status thereafter shall be determined by future order of Court.

2. Plaintiffs will petition the Court to determine whether
d in what amount fees and costs will be awarded with respect to
e matters resolved by this Agreed Order, Judgment and Decree.
fendants will file objections. The parties have made no agreement
ith respect to these questions.

ENTER:

United States District Judge

Date

THE PARTIES HERETO, BY THEIR UNDERSIGNED COUNSEL, CONSENT TO THE ENTRY OF THIS AGREED ORDER, JUDGMENT AND DECREE:

City of Chicago defendants
by

Stanley Garber
Corporation Counsel

By
Peter Fitzpatrick
Special Assistant
Corporation Counsel

ACLU plaintiffs
by

and

Robert C. Howard
Matthew J. Piers
Douglas W. Cassel
Alexander L. Polikoff
Robert J. Vollen
Robert L. Tucker
Attorneys for ACLU plaintiffs

Alliance plaintiffs
by

Richard M. Gutman
Lance Haddix
Attorneys for Alliance plaintiffs
as listed in Appendix A

April 24, 1981.

with the approach taken by either the Court or JUSTICE REHNQUIST. Both opinions engage in exhaustive, but ultimately unilluminating, exegesis of the common law of the availability of punitive damages in 1871. Although both the Court and JUSTICE REHNQUIST display admirable skills in legal research and analysis of great numbers of musty cases, the results do not significantly further the goal of the inquiry: to establish the intent of the 42d Congress. In interpreting § 1983, we have often looked to the common law as it existed in 1871, in the belief that, when Congress was silent on a point, it intended to adopt the principles of the common law with which it was familiar. See, *e. g.*, *City of Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247, 258 (1981); *Carey* v. *Piphus*, 435 U. S. 247, 255 (1978). This approach makes sense when there was a generally prevailing rule of common law, for then it is reasonable to assume that congressmen were familiar with that rule and imagined that it would cover the cause of action that they were creating. But when a significant split in authority existed, it strains credulity to argue that Congress simply assumed that one view rather than the other would govern. Particularly in a case like this one, in which those interpreting the common law of 1871 must resort to dictionaries in an attempt to translate the language of the late nineteenth century into terms that judges of the late twentieth century can understand, see *ante*, at 9, and n. 8; 5, and n. 3, and in an area in which the courts of the earlier period frequently used inexact and contradictory language, see *ante*, at 15, n. 12, we cannot safely infer anything about congressional intent from the divided contemporaneous judicial opinions. The battle of the string citations can have no winner.

Once it is established that the common law of 1871 provides us with no real guidance on this question, we should turn to the policies underlying § 1983 to determine which rule best accords with those policies. In *Fact Concerts*, we identified the purposes of § 1983 as preeminently to compensate victims of constitutional violations and to deter further violations. 453 U. S. at 268. See also *Robertson* v. *Wegmann*, 436 U. S. 584, 590–591 (1978); *Carey* v. *Piphus*, 435 U. S. 247, 254–257, and n.9 (1978). The conceded availability of compensatory damages, particularly when coupled with the availability of attorney's fees under § 1988, completely fulfills the goal of compensation, leaving only deterrence to be served by awards of punitive damages. We must then confront the close question whether a standard permitting an award of unlimited punitive damages on the basis of recklessness will chill public officials in the performance of their duties more than it will deter violations of the Constitution, and whether the availability of punitive damages for reckless violations of the Constitution in addition to attorney's fees will create an incentive to bring an ever-increasing flood of § 1983 claims, threatening the ability of the federal courts to handle those that are meritorious. Although I cannot concur in JUSTICE REHNQUIST's wholesale condemnation of awards of punitive damages in any context or with the suggestion that punitive damages should not be available even for intentional or malicious violations of constitutional rights, I do agree with the discussion in Part V of his opinion of the special problems of permitting awards of punitive damages for the recklessness of public officials. Since awards of compensatory damages and attorney's fees already provide significant deterrence, I am persuaded that the policies counseling against awarding punitive damages for the recklessness of public officials outweigh the desirability of any incremental deterrent effect that such awards may have. Consequently, I dissent.

ROBERT PRESSON, Assistant Attorney General of Missouri, Jefferson City, Mo. (JOHN ASHCROFT, Attorney General and PAUL ROBERT OTTO, Assistant Attorney General, with him on the brief) for petitioner; BRADLEY H. LOCKENVITZ, Linn, Mo. for respondent.

No. 81-1064

CITY OF LOS ANGELES, PET[illegible] *v.* ADOLPH LYONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Syllabus

No. 81-1064. Argued November 2, 1982—Decided April 20, 1983

Respondent filed suit in Federal District Court against petitioner city of Los Angeles and certain of its police officers, alleging that in 1976 he was stopped by the officers for a traffic violation and that although he offered no resistance, the officers, without provocation or justification, seized him and applied a "chokehold," rendering him unconscious and causing damage to his larynx. In addition to seeking damages, the complaint sought injunctive relief against petitioner, barring the use of chokeholds except in situations where the proposed victim reasonably appeared to be threatening the immediate use of deadly force. It was alleged that, pursuant to petitioner's authorization, police officers routinely applied chokeholds in situations where they were not threatened by the use of any deadly force; that numerous persons had been injured as a result thereof; that respondent justifiably feared that any future contact he might have with police officers might again result in his being choked without provocation; and that there was thus a threatened impairment of various rights protected by the Federal Constitution. The District Court, on the basis of the pleadings, ultimately entered a preliminary injunction against the use of chokeholds under circumstances that did not threaten death or serious bodily injury. The Court of Appeals affirmed.

Held:

1. The case is not rendered moot even though while it was pending in this Court, city police authorities prohibited use of a certain type of chokehold in any circumstances and imposed a 6-month moratorium on the use of another type of chokehold except under circumstances where deadly force was authorized. The moratorium by its terms was not permanent, and thus intervening events have not irrevocably eradicated the effects of the alleged misconduct.

2. The federal courts are without jurisdiction to entertain respondent's claim for injunctive relief. *O'Shea* v. *Littleton*, 414 U. S. 488; *Rizzo* v. *Goode*, 423 U. S. 362.

(a) To satisfy the "case or controversy" requirement of Art. III, a plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct, and the injury or threat of injury must be "real and immediate," not "conjectural" or "hypothetical." "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *O'Shea*, *supra*, at 495–496.

(b) Respondent has failed to demonstrate a case or controversy with petitioner that would justify the equitable relief sought. That respondent may have been illegally choked by the police in 1976, while presumably affording him standing to claim damages against the individual officers and perhaps against petitioner, does not establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer who would illegally choke him into unconsciousness without any provocation. If chokeholds were authorized only to counter resistance to an arrest by a suspect, or to thwart an effort to escape, any future threat to respondent from petitioner's policy or from the conduct of police officers would be no more real than the possibility that he would again have an encounter with the police and that he would either illegally resist arrest or the officers would disobey their instructions and again render him unconscious without any provocation. The equitable doctrine that cessation of the challenged conduct (here the few seconds while the chokehold was being applied to respondent) does not bar an injunction is not controlling, since respondent's lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as the result of that practice even if continued. The rule that a claim does not become moot where it is capable of repetition, yet evades review, is likewise inapposite.

(c) Even assuming that respondent's pending damages suit affords him Art. III standing to seek an injunction as a remedy for the claim arising out of the 1976 events, nevertheless the equitable remedy is unavailable because respondent failed to show irreparable injury—a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again. Nor will respondent's injury allegedly suffered in 1976 go unrecompensed; for that injury he has an adequate damages remedy at law. Recognition of the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of irreparable injury which is both great and immediate.

656 F. 2d 417, reversed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and POWELL, REHNQUIST, and O'CONNOR, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, BLACKMUN, and STEVENS, JJ., joined.

JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether respondent Lyons satisfied the prerequisites for seeking injunctive relief in the federal district court.

I

This case began on February 7, 1977, when respondent, Adolph Lyons, filed a complaint for damages, injunction, and declaratory relief in the United District Court for the Central District of California. The defendants were the City of Los Angeles and four of its police officers. The complaint alleged that on October 6, 1976, at 2 a. m., Lyons was stopped by the defendant officers for a traffic or vehicle code violation and that although Lyons offered no resistance or threat whatsoever, the officers, without provocation or justification, seized Lyons and applied a "chokehold"[1]—either the "bar arm control" hold or the "carotid-artery control" hold or both—rendering him unconscious and causing damage to his larynx. Counts I through IV of the complaint sought damages against the officers and the City. Count V, with which we are principally concerned here, sought a preliminary and permanent injunction against the City barring the use of the control holds. That count alleged that the city's police officers, "pursuant to the authorization, instruction and encouragement of defendant City of Los Angeles, regularly and routinely apply these choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever," that numerous persons have been injured as the result of the application of the chokeholds, that Lyons and others similarly situated are threatened with irreparable injury in the form of bodily injury and loss of life, and that Lyons "justifiably fears that any contact he has with Los Angeles police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse." Lyons alleged the threatened impairment of rights protected by the First, Fourth, Eighth and Fourteenth Amendments. Injunctive relief was sought against the use of the control holds "except in situations where the proposed victim of said control reasonably appears to be threatening the immediate use of deadly force." Count VI sought declaratory relief against the City, *i. e.*, a judgment that use of the chokeholds absent the threat of immediate use of deadly force is a *per se* violation of various constitutional rights.

The District Court, by order, granted the City's motion for partial judgment on the pleadings and entered judgment for the City on Count V and VI.[2] The Court of Appeals reversed the judgment for the City on Count V and VI, holding over the City's objection that despite our decisions in *O'Shea* v. *Littleton*, 414 U. S. 488 (1974), and *Rizzo* v. *Goode*, 423 U. S. 362 (1976), Lyons had standing to seek relief against the application of the chokeholds. 615 F. 2d 1243. The Court of Appeals held that there was a sufficient likelihood that Lyons would again be stopped and subjected to the unlawful use of force to constitute a case or controversy and to warrant the issuance of an injunction, if the injunction was otherwise authorized. We denied certiorari. 449 U. S. 934.

On remand, Lyons applied for a preliminary injunction. Lyons pressed only the Count V claim at this point. See n. 6, *infra*. The motion was heard on affidavits, depositions and government records. The District Court found that Lyons had been stopped for a traffic infringement and that without provocation or legal justification the officers involved had applied a "department-authorized chokehold which resulted in injuries to the plaintiff." The court further found that the department authorizes the use of the holds in situations where no one is threatened by death or grievous bodily harm, that officers are insufficiently trained, that the use of the holds involves a high risk of injury or death as then employed, and that their continued use in situations where neither death nor serious bodily injury is threatened "is unconscionable in a civilized society." The court concluded that such use violated Lyons' substantive due process rights under the Fourteenth Amendment. A preliminary injunction was entered enjoining "the use of both the carotid-artery and bar arm holds under circumstances which do not threaten death or serious bodily injury." An improved training program and regular reporting and record keeping were also ordered.[3] The Court of Appeals affirmed in a brief *per curiam* opinion stating that the District Court had not abused its discretion in entering a preliminary injunction. 656 F. 2d 417 (1981). We granted certiorari, 455 U. S. 937 (1982), and now reverse.

II

Since our grant of certiorari, circumstances pertinent to the case have changed. Originally, Lyons' complaint alleged that at least two deaths had occurred as a result of the application of chokeholds by the police. His first amended complaint alleged that 10 chokehold-related deaths had occurred. By May, 1982, there had been five more such deaths. On May 6, 1982, the Chief of Police in Los Angeles prohibited the use of the bar-arm chokehold in any circumstances. A few days later, on May 12, 1982, the Board of Police Commission-

[1] The police control procedures at issue in this case are referred to as "control holds," "chokeholds," "strangleholds," and "neck restraints." All these terms refer to two basic control procedures: the "carotid" hold and the "bar arm" hold. In the "carotid" hold, an officer positioned behind a subject places one arm around the subject's neck and holds the wrist of that arm with his other hand. The officer, by using his lower forearm and bicep muscle, applies pressure concentrating on the carotid arteries located on the sides of the subject's neck. The "carotid" hold is capable of rendering the subject unconscious by diminishing the flow of oxygenated blood to the brain. The "bar arm" hold, which is administered similarly, applies pressure at the front of the subject's neck. "Bar arm" pressure causes pain, reduces the flow of oxygen to the lungs, and may render the subject unconscious.

[2] The order also gave judgment for the City on Count II insofar as that Count rested on the First and Eighth Amendments, as well as on Count VII, which sought a declaratory judgment that the City Attorney was not authorized to prosecute misdemeanor charges. It appears from the record on file with this Court that Counts III and IV had previously been dismissed on motion, although they reappeared in an amended complaint filed after remand from the Court of Appeals.

[3] By its terms, the injunction was to continue in force until the court approved the training program to be presented to it. It is fair to assume that such approval would not be given if the program did not confine the use of the strangleholds to those situations in which their use, in the view of the District Court, would be constitutional. Because of successive stays entered by the Court of Appeals and by this Court, the injunction has not gone into effect.

ers imposed a six-month moratorium on the use of the carotid-artery chokehold except under circumstances where deadly force is authorized.[4]

Based on these events, on June 3, 1982, the City filed in this Court a Memorandum Suggesting a Question of Mootness, reciting the facts but arguing that the case was not moot. Lyons in turn filed a motion to dismiss the writ of certiorari as improvidently granted. We denied that motion but reserved the question of mootness for later consideration.

In his brief and at oral argument, Lyons has reasserted his position that in light of changed conditions, an injunctive decree is now unnecessary because he is no longer subject to a threat of injury. He urges that the preliminary injunction should be vacated. The City, on the other hand, while acknowledging that subsequent events have significantly changed the posture of this case, again asserts that the case is not moot because the moratorium is not permanent and may be lifted at any time.

We agree with the City that the case is not moot, since the moratorium by its terms is not permanent. Intervening events have not "irrevocably eradicated the effects of the alleged violation." *County of Los Angeles* v. *Davis*, 440 U. S. 625, 631 (1979). We nevertheless hold, for another reason, that the federal courts are without jurisdiction to entertain Lyons' claim for injunctive relief.

III

It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshhold requirement imposed by Article III of the Constitution by alleging an actual case or controversy. *Flast* v. *Cohen*, 392 U. S. 83, 94–101 (1968); *Jenkins* v. *McKeithen*, 395 U. S. 411, 421–425 (1969) (opinion of MARSHALL, J.). Plaintiffs must demonstrate a "personal stake in the outcome" in order to "assure that concrete adverseness which sharpens the presentation of issues" necessary for the proper resolution of constitutional questions. *Baker* v. *Carr*, 369 U. S. 186, 204 (1962). Abstract injury is not enough. The plaintiff must show that he "has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged official conduct and the injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." See, *e. g.*, *Golden* v. *Zwickler*, 394 U. S. 103, 109–110 (1969); *United Public Workers* v. *Mitchell*, 330 U. S. 75, 89–91 (1947); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941); *Massachusetts* v. *Mellon*, 262 U. S. 447, 488 (1923).

In *O'Shea* v. *Littleton*, 414 U. S. 488 (1974), we dealt with a case brought by a class of plaintiffs claiming that they had been subjected to discriminatory enforcement of the criminal law. Among other things, a county magistrate and judge were accused of discriminatory conduct in various respects, such as sentencing members of plaintiff's class more harshly than other defendants. The Court of Appeals reversed the dismissal of the suit by the District Court, ruling that if the allegations were proved, an appropriate injunction could be entered.

We reversed for failure of the complaint to allege a case or controversy. 414 U. S., at 493. Although it was claimed in that case that particular members of the plaintiff class had actually suffered from the alleged unconstitutional practices, we observed that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Id.*, at 495–496. Past wrongs were evidence bearing on "whether there is a real and immediate threat of repeated injury." *Id.*, at 496. But the prospect of future injury rested "on the likelihood that [plaintiffs] will again be arrested for and charged with violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners." *Ibid.* The most that could be said for plaintiffs' standing was "that *if* [plaintiffs] proceed to violate an unchallenged law and *if* they are charged, held to answer, and tried in any proceedings before petitioners, they will be subjected to the discriminatory practices that petitioners are alleged to have followed." *Id.*, at 497. We could not find a case or controversy in those circumstances: the threat to the plaintiffs was not "sufficiently real and immediate to show an existing controversy simply because they anticipate violating lawful criminal statutes and being tried for their offenses. . . ." *Id.*, at 496. It was to be assumed "that [plaintiffs] will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." *Id.*, at 497.

We further observed that case or controversy considerations "obviously shade into those determining whether the complaint states a sound basis for equitable relief," 414 U. S., at 499, and went on to hold that even if the complaint presented an existing case or controversy, an adequate basis for equitable relief against petitioners had not been demonstrated:

> "[Plaintiffs] have failed, moreover, to establish the basic requisites of the issuance of equitable relief in these circumstances—the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. We have already canvassed the necessarily conjectural nature of the threatened injury to which [plaintiffs] are allegedly subjected. And if any of the [plaintiffs] are ever prosecuted and face trial, or if they are illegally sentenced, there are available state and federal procedures which could provide relief from the wrongful conduct alleged." 414 U. S., at 502.

Another relevant decision for present purposes is *Rizzo* v. *Goode*, 423 U. S. 362 (1976), a case in which plaintiffs alleged widespread illegal and unconstitutional police conduct aimed at minority citizens and against City residents in general. The Court reiterated the holding in *O'Shea* that past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy. The claim of injury rested upon "what one or a small, unnamed minority of policemen might do to them in the future because of that unknown policeman's perception" of departmental procedures. 423 U. S., at 372. This hypothesis was "even more attenuated than those allegations of future injury found insufficient in *O'Shea* to warrant [the] invocation of federal jurisdiction." *Ibid.* The Court also held that plaintiffs' showing at trial of a relatively few instances of violations by individual police officers, without any showing of a deliberate policy on behalf of the named defendants, did not provide a basis for equitable relief.

Golden v. *Zwickler*, 394 U. S. 103 (1969), a case arising in an analogous situation, is directly apposite. Congressman Zwickler sought a declaratory judgment that a New York statute prohibiting anonymous handbills directly pertaining

[4] The Board of Police Commissioners directed the Los Angeles Police Department (LAPD) staff to use and assess the effectiveness of alternative control techniques and report its findings to the Board every two months. Prior to oral argument in this case, two such reports had been submitted, but the Board took no further action. On November 9, 1982, the Board extended the moratorium until it had the "opportunity to review and evaluate" a third report from the police department. Insofar as we are advised, the third report has yet to be submitted.

to election campaigns was unconstitutional. Although Zwickler had once been convicted under the statute,[5] he was no longer a Congressman apt to run for reelection. A unanimous Court held that because it was "most unlikely" that Zwickler would again be subject to the statute, no case or controversy of "sufficient immediacy and reality" was present to allow a declaratory judgment. 394 U. S., at 109. Just as Zwickler's assertion that he could be a candidate for Congress again was "hardly a substitute for evidence that this is a prospect of 'immediacy and reality,'" *ibid*, Lyons' assertion that he may again be subject to an illegal chokehold does not create the actual controversy that must exist for a declaratory judgment to be entered.

We note also our *per curiam* opinion in *Ashcroft* v. *Mattis*, 431 U. S. 171 (1977). There, the father of a boy who had been killed by the police sought damages and a declaration that the Missouri statute which authorized police officers to use deadly force in apprehending a person who committed a felony was unconstitutional. Plaintiff alleged that he had another son, who "*if* ever arrested or brought under an attempt at arrest on suspicion of a felony, *might* flee or give the appearance of fleeing, and would therefore be *in danger* of being killed by these defendants or other police officers . . ." 431 U. S., at 172–173, n. 2. We ruled that "[s]uch speculation is insufficient to establish the existence of a present, live controversy." *Ibid.*

IV

No extension of *O'Shea* and *Rizzo* is necessary to hold that respondent Lyons has failed to demonstrate a case or controversy with the City that would justify the equitable relief sought.[6] Lyons' standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers. Count V of the complaint alleged the traffic stop and choking incident five months before. That Lyons may have been illegally choked by the police on October 6, 1976, while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the City, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part. The additional allegation in the complaint that the police in Los Angeles routinely apply chokeholds in situations where they are not threatened by the use of deadly force falls far short of the allegations that would be necessary to establish a case or controversy between these parties.

In order to establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either, (1) that *all* police officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation or for questioning or, (2) that the City ordered or authorized police officers to act in such manner. Although Count V alleged that the City authorized the use of the control holds in situations where deadly force was not threatened, it did not indicate why Lyons might be realistically threatened by police officers who acted within the strictures of the City's policy. If, for example, chokeholds were authorized to be used only to counter resistance to an arrest by a suspect, or to thwart an effort to escape, any future threat to Lyons from the City's policy or from the conduct of police officers would be no more real than the possibility that he would again have an encounter with the police and that either he would illegally resist arrest or detention or the officers would disobey their instructions and again render him unconscious without any provocation.[7]

Under *O'Shea* and *Rizzo*, these allegations were an insufficient basis to provide a federal court with jurisdiction to entertain Count V of the complaint.[8] This was apparently the conclusion of the District Court in dismissing Lyons' claim for injunctive relief. Although the District Court acted without opinion or findings, the Court of Appeals interpreted its action as based on lack of standing, *i. e.*, that under *O'Shea* and *Rizzo*, Lyons must be held to have made an "insufficient showing that the police were likely to do this to the plaintiff again." 615 F. 2d, at 1246. For several reasons—each of them infirm, in our view—the Court of Appeals thought reliance on *O'Shea* and *Rizzo* was misplaced and reversed the District Court.

First, the Court of Appeals thought that Lyons was more immediately threatened than the plaintiffs in those cases since, according to the Court of Appeals, Lyons need only be stopped for a minor traffic violation to be subject to the strangleholds. But even assuming that Lyons would again be stopped for a traffic or other violation in the reasonably

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[5] Zwickler's conviction was reversed on state law grounds. 394 U. S., at 105.

[6] The City states in its brief that on remand from the Court of Appeals' first judgment "the parties agreed and advised the district court that the respondent's damages claim could be severed from his effort to obtain equitable relief." Brief for Petitioner 8 n. 7. Respondent does not suggest otherwise. This case, therefore, as it came to us, is on all fours with *O'Shea* and should be judged as such.

[7] The centerpiece of Justice Marshall's dissent is that Lyons had standing to challenge the City's policy because to recover damages he would have to prove that what allegedly occurred on October 6, 1976, was pursuant to City authorization. We agree completely that for Lyons to succeed in his damages action, it would be necessary to prove that what happened to him—that is, as alleged, he was choked without any provocation or legal excuse whatsoever—was pursuant to a City policy. For several reasons, however, it does not follow that Lyons had standing to seek the injunction prayed for in Count V.

First, Lyons alleges in Count II of his first amended complaint that on October 6, 1976, the officers were carrying out official policies of the City. That allegation was incorporated by reference in Count V. That policy, however, is described in paragraphs 20 and 23 of Count V as authorizing the use of chokeholds "in situations where [the officers] are threatened by far less than deadly force." This is not equivalent to the unbelievable assertion that the City either orders or authorizes application of the chokeholds where there is no resistance or other provocation.

Second, even if such an allegation is thought to be contained in the complaint, it is belied by the record made on the application for preliminary injunction.

Third, even if the complaint must be read as containing an allegation that officers are authorized to apply the chokeholds where there is no resistance or other provocation, it does not follow that Lyons has standing to seek an injunction against the application of the restraint holds in situations that he has not experienced, as for example, where the suspect resists arrest or tries to escape but does not threaten the use of deadly force. Yet that is precisely the scope of the injunction that Lyons prayed for in Count V.

Fourth, and in any event, to have a case or controversy with the City that could sustain Count V, Lyons would have to credibly allege that he faced a realistic threat from the future application of the City's policy. Justice Marshall nowhere confronts this requirement—the necessity that Lyons demonstrate that he, himself, will not only again be stopped by the police but will be choked without any provocation or legal excuse. Justice Marshall plainly does not agree with that requirement, and he was in dissent in *O'Shea* v. *Littleton*. We are at issue in that respect.

[8] As previously indicated, *supra*, p. 2, Lyons alleged that he feared he would be choked in any future encounter with the police. The reasonableness of Lyons' fear is dependent upon the likelihood of a recurrence of the allegedly unlawful conduct. It is the *reality* of the threat of repeated injury that is relevant to the standing inquiry, not the plaintiff's subjective apprehensions. The emotional consequences of a prior act simply are not a sufficient basis for an injunction absent a real and immediate threat of future injury by the defendant. Of course, emotional upset is a relevant consideration in a damages action.

near future, it is untenable to assert, and the complaint made no such allegation, that strangleholds are applied by the Los Angeles police to every citizen who is stopped or arrested regardless of the conduct of the person stopped. We cannot agree that the "odds," 615 F. 2d, at 1247, that Lyons would not only again be stopped for a traffic violation but would also be subjected to a chokehold without any provocation whatsoever are sufficient to make out a federal case for equitable relief. We note that five months elapsed between October 6, 1976, and the filing of the complaint, yet there was no allegation of further unfortunate encounters between Lyons and the police.

Of course, it may be that among the countless encounters between the police and the citizens of a great city such as Los Angeles, there will be certain instances in which strangleholds will be illegally applied and injury and death unconstitutionally inflicted on the victim. As we have said, however, it is no more than conjecture to suggest that in every instance of a traffic stop, arrest, or other encounter between the police and a citizen, the police will act unconstitutionally and inflict injury without provocation or legal excuse. And it is surely no more than speculation to assert either that Lyons himself will again be involved in one of those unfortunate instances, or that he will be arrested in the future and provoke the use of a chokehold by resisting arrest, attempting to escape, or threatening deadly force or serious bodily injury.

Second, the Court of Appeals viewed *O'Shea* and *Rizzo* as cases in which the plaintiffs sought "massive structural" relief against the local law enforcement systems and therefore that the holdings in those cases were inapposite to cases such as this where the plaintiff, according to the Court of Appeals, seeks to enjoin only an "established," "sanctioned" police practice assertedly violative of constitutional rights. *O'Shea* and *Rizzo*, however, cannot be so easily confined to their facts. If Lyons has made no showing that he is realistically threatened by a repetition of his experience of October, 1976, then he has not met the requirements for seeking an injunction in a federal court, whether the injunction contemplates intrusive structural relief or the cessation of a discrete practice.

The Court of Appeals also asserted that Lyons "had a live and active claim" against the City "if only for a period of a few seconds" while the stranglehold was being applied to him and that for two reasons the claim had not become moot so as to disentitle Lyons to injunctive relief: First, because under normal rules of equity, a case does not become moot merely because the complained of conduct has ceased; and second, because Lyons' claim is "capable of repetition but evading review" and therefore should be heard. We agree that Lyons had a live controversy with the City. Indeed, he still has a claim for damages against the City that appears to meet all Article III requirements. Nevertheless, the issue here is not whether that claim has become moot but whether Lyons meets the preconditions for asserting an injunctive claim in a federal forum. The equitable doctrine that cessation of the challenged conduct does not bar an injunction is of little help in this respect, for Lyons' lack of standing does not rest on the termination of the police practice but on the speculative nature of his claim that he will again experience injury as the result of that practice even if continued.

The rule that a claim does not become moot where it is capable of repetition, yet evades review, is likewise inapposite. Lyons' claim that he was illegally strangled remains to be litigated in his suit for damages; in no sense does that claim "evade" review. Furthermore, the capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality. *DeFunis* v. *Odegaard*, 416 U. S. 312, 319 (1974). As we have indicated, Lyons has not made this demonstration.

The record and findings made on remand do not improve Lyons' position with respect to standing. The District Court, having been reversed, did not expressly address Lyons' standing to seek injunctive relief, although the City was careful to preserve its position on this question. There was no finding that Lyons faced a real and immediate threat of again being illegally choked. The City's policy was described as authorizing the use of the strangleholds "under circumstances where no one is threatened with death or grievous bodily harm." That policy was not further described, but the record before the court contained the department's existing policy with respect to the employment of chokeholds. Nothing in that policy, contained in a Police Department manual, suggests that the chokeholds, or other kinds of force for that matter, are authorized absent some resistance or other provocation by the arrestee or other suspect.[1] On the contrary, police officers were instructed to use chokeholds only when lesser degrees of force do not suffice and then only "to gain control of a suspect who is violently resisting the officer or trying to escape." App. 230.

Our conclusion is that the Court of Appeals failed to heed *O'Shea*, *Rizzo*, and other relevant authority, and that the District Court was quite right in dismissing Count V.

V Dictum

Lyons fares no better if it be assumed that his pending damages suit affords him Article III standing to seek an injunction as a remedy for the claim arising out of the October 1976 events. The equitable remedy is unavailable absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again—a "likelihood of substantial and immediate irreparable injury." *O'Shea* v. *Littleton*, 414 U. S., at 502. The speculative nature of Lyons' claim of future injury requires a finding that this prerequisite of equitable relief has not been fulfilled.

Nor will the injury that Lyons allegedly suffered in 1976 go unrecompensed; for that injury, he has an adequate remedy at law. Contrary to the view of the Court of Appeals, it is not at all "difficult" under our holding "to see how anyone can ever challenge police or similar administrative practices." 615 F. 2d, at 1250. The legality of the violence to which Lyons claims he was once subjected is at issue in his suit for damages and can be determined there.

Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional. Cf. *Warth* v. *Seldin*, 422 U. S. 490 (1975); *Schlesinger* v. *Reservists to Stop the War*, 418 U. S. 208 (1974); *United States* v. *Richardson*, 418 U. S. 166

[1] The dissent notes that a LAPD training officer stated that the police are authorized to employ the control holds whenever an officer "feels" that there is about to be a bodily attack. *Post*, at 6. The dissent's emphasis on the word *"feels"* apparently is intended to suggest that LAPD officers are authorized to apply the holds whenever they "feel" like it. If there is a distinction between permitting the use of the holds when there is a "threat" of serious bodily harm, and when the officer "feels" or believes there is about to be a bodily attack, the dissent has failed to make it clear. The dissent does not, because it cannot, point to any written or oral pronouncement by the LAPD or any evidence showing a pattern of police behavior that would indicate that the official policy would permit the application of the control holds on a suspect that was not offering, or threatening to offer, physical resistance.

(1974). This is not to suggest that such undifferentiated claims should not be taken seriously by local authorities. Indeed, the interest of an alert and interested citizen is an essential element of an effective and fair government, whether on the local, state or national level.[10] A federal court, however, is not the proper forum to press such claims unless the requirements for entry and the prerequisites for injunctive relief are satisfied.

We decline the invitation to slight the preconditions for equitable relief; for as we have held, recognition of the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the states' criminal laws in the absence of irreparable injury which is both great and immediate. *O'Shea*, 414 U. S., at 499; *Younger* v. *Harris*, 401 U. S. 37, 46 (1971). *Mitchum* v. *Foster*, 407 U. S. 225 (1972) held that suits brought under 42 U. S. C. § 1983 are exempt from the flat ban against the issuance of injunctions directed at state court proceedings, 28 U. S. C. § 2283. But this holding did not displace the normal principles of equity, comity and federalism that should inform the judgment of federal courts when asked to oversee state law enforcement authorities. In exercising their equitable powers federal courts must recognize "[t]he special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." *Stefanelli* v. *Minard*, 342 U. S. 117, 120 (1951); *O'Shea* v. *Littleton*, 414 U. S., at 500. See also *Rizzo* v. *Goode*, 423 U. S., at 380; *Cleary* v. *Bolger*, 371 U. S. 392 (1963); *Wilson* v. *Schnettler*, 365 U. S. 381 (1961); *Pugach* v. *Dollinger*, 365 U. S. 458 (1961). The Court of Appeals failed to apply these factors properly and therefore erred in finding that the District Court had not abused its discretion in entering an injunction in this case.

As we noted in *O'Shea*, 414 U. S., at 503, withholding injunctive relief does not mean that the "federal law will exercise no deterrent effect in these circumstances." If Lyons has suffered an injury barred by the Federal Constitution, he has a remedy for damages under § 1983. Furthermore, those who deliberately deprive a citizen of his constitutional rights risk conviction under the federal criminal laws. *Ibid.*

Beyond these considerations the state courts need not impose the same standing or remedial requirements that govern federal court proceedings. The individual states may permit their courts to use injunctions to oversee the conduct of law enforcement authorities on a continuing basis. But this is not the role of a federal court absent far more justification than Lyons has proffered in this case.

The judgment of the Court of Appeals is accordingly

Reversed.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN, JUSTICE BLACKMUN and JUSTICE STEVENS join, dissenting.

The District Court found that the City of Los Angeles authorizes its police officers to apply life-threatening chokeholds to citizens who pose no threat of violence, and that respondent, Adolph Lyons, was subjected to such a chokehold. The Court today holds that a federal court is without power to enjoin the enforcement of the City's policy, no matter how flagrantly unconstitutional it may be. Since no one can show that he will be choked in the future, no one—not even a person who, like Lyons, has almost been choked to death—has standing to challenge the continuation of the policy. The City is free to continue the policy indefinitely as long as it is willing to pay damages for the injuries and deaths that result. I dissent from this unprecedented and unwarranted approach to standing.

There is plainly a "case or controversy" concerning the constitutionality of the City's chokehold policy. The constitutionality of that policy is directly implicated by Lyons' claim for damages against the City. The complaint clearly alleges that the officer who choked Lyons was carrying out an official policy, and a municipality is liable under 42 U. S. C. § 1983 for the conduct of its employees only if they acted pursuant to such a policy. *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658, 694 (1978). Lyons therefore has standing to challenge the City's chokehold policy and to obtain whatever relief a court may ultimately deem appropriate. None of our prior decisions suggests that his requests for particular forms of relief raise any additional issues concerning his standing. Standing has always depended on whether a plaintiff has a "personal stake in the outcome of the controversy," *Baker* v. *Carr*, 369 U. S. 186, 204 (1962), not on the "precise nature of the relief sought." *Jenkins* v. *McKeithen*, 395 U. S. 411, 423 (1969) (opinion of MARSHALL, J., joined by Warren, C. J., and BRENNAN, J.).

I

A

Respondent Adolph Lyons is a 24-year-old Negro male who resides in Los Angeles. According to the uncontradicted evidence in the record,[1] at about 2:30 A. M. on October 6, 1976, Lyons was pulled over to the curb by two officers of the Los Angeles Police Department (LAPD) for a traffic infraction because one of his taillights was burned out. The officers greeted him with drawn revolvers as he exited from his car. Lyons was told to face his car and spread his legs. He did so. He was then ordered to clasp his hands and put them on top of his head. He again complied. After one of the officers completed a pat-down search, Lyons dropped his hands, but was ordered to place them back above his head, and one of the officers grabbed Lyons' hands and slammed them onto his head. Lyons complained about the pain caused by the ring of keys he was holding in his hand. Within five to ten seconds, the officer began to choke Lyons by applying a forearm against his throat. As Lyons struggled for air, the officer handcuffed him, but continued to apply the chokehold until he blacked out. When Lyons regained consciousness, he was lying face down on the ground, choking, gasping for air, and spitting up blood and dirt. He had urinated and defecated. He was issued a traffic citation and released.

On February 7, 1977, Lyons commenced this action under 42 U. S. C. § 1983 against the individual officers and the City, alleging violations of his rights under the Fourth, Eighth, and Fourteenth Amendments to the Constitution and seeking damages and declaratory and injunctive relief. He claimed that he was subjected to a chokehold without justification and that defendant officers were "carrying out the official policies, customs and practices of the Los Angeles Police Department and the City of Los Angeles." Count II,

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[10] The City's Memorandum Suggesting a Question of Mootness informed the Court that the use of the control holds had become "a major civic controversy" and that in April and May of 1982 "a spirited, vigorous, and at times emotional debate" on the issue took place. The result was the current moratorium on the use of the holds.

[1] The following summary of the evidence is taken from Lyons' deposition and his "Notice of Application and Application for Preliminary Injunction and Declaratory Relief; Points and Authorities." Pp. 3–4. Although petitioners' answer contains a general denial of the allegations set forth in the complaint, petitioners have never presented any evidence to challenge Lyons' account. Brief for Petitioner at 8.

¶13.[2] These allegations were included or incorporated in each of the counts in which the City was named as a defendant. See Counts II through VI. Lyons alleged that the City authorizes the use of chokeholds "in innumerable situations where the police are not threatened by the use of any deadly force whatsoever." Count V, ¶22.

B

Although the City instructs its officers that use of a chokehold does not constitute deadly force, since 1975 no less than 16 persons have died following the use of a chokehold by an LAPD police officer. Twelve have been Negro males.[3] The evidence submitted to the District Court[4] established that for many years it has been the official policy of the City to permit police officers to employ chokeholds in a variety of situations where they face no threat of violence. In reported "altercations" between LAPD officers and citizens the chokeholds are used more frequently than any other means of physical restraint.[5] Between February 1975 and July 1980, LAPD officers applied chokeholds on at least 975 occasions, which represented more than three-quarters of the reported altercations.[6]

It is undisputed that chokeholds pose a high and unpredictable risk of serious injury or death. Chokeholds are intended to bring a subject under control by causing pain and rendering him unconscious. Depending on the position of the officer's arm and the force applied, the victim's voluntary or involuntary reaction, and his state of health, an officer may inadvertently crush the victim's larynx, trachea, or thyroid. The result may be death caused by either cardiac arrest or asphyxiation.[7] An LAPD officer described the reaction of a person to being choked as "do[ing] the chicken," Exh. 44, p. 93, in reference apparently to the reactions of a chicken when its neck is wrung. The victim experiences extreme pain. His face turns blue as he is deprived of oxygen, he goes into spasmodic convulsions, his eyes roll back, his body wriggles, his feet kick up and down, and his arms move about wildly.

Although there has been no occasion to determine the precise contours of the City's chokehold policy, the evidence submitted to the District Court provides some indications. LAPD training officer Terry Speer testified that an officer is authorized to deploy a chokehold whenever he "*feels* that there's about to be a bodily attack made on him." App. 381 (emphasis added). A training bulletin states that "[c]ontrol holds . . . allow officers to subdue *any* resistance by the suspects." Exh. 47, p. 1 (emphasis added). In the proceedings below the City characterized its own policy as authorizing the use of chokeholds "to gain control of a suspect who is violently resisting the officer *or trying to escape*," to "subdue *any* resistance by suspects,"[8] and to permit an officer, "where . . . resisted, but *not necessarily threatened with serious bodily harm or death*, . . . to subdue a suspect who forcibly resists an officer." (Emphasis added.)[9]

The training given LAPD officers provides additional revealing evidence of the City's chokehold policy. Officer Speer testified that in instructing officers concerning the use of force, the LAPD does not distinguish between felony and misdemeanor suspects. App. 379. Moreover, the officers are taught to maintain the chokehold until the suspect goes limp, App. 387; Pet. App. H. 51a, despite substantial evidence that the application of a chokehold invariably induces a "flight or flee" syndrome, producing an *involuntary* struggle by the victim which can easily be misinterpreted by the officer as willful resistance that must be overcome by prolonging the chokehold and increasing the force applied. See n. 7, *supra*. In addition, officers are instructed that the chokeholds can be safely deployed for up to three or four minutes. App. 387–388; Pet. App. H. 48a. Robert Jarvis, the

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[2] Count I of the first amended complaint also stated a claim against the individual officers for damages. ¶8.

[3] Thus in a City where Negro males constitute 9% of the population, they have accounted for 75% of the deaths resulting from the use of chokeholds. In addition to his other allegations, Lyons alleged racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. ¶¶10, 15, 23, 24, 25, 30.

Of the 16 deaths, 10 occurred prior to the District Court's issuance of the preliminary injunction, although at that time the parties and the Court were aware of only nine. On December 24, 1980, the Court of Appeals stayed the preliminary injunction pending appeal. Four additional deaths occurred during the period prior to the grant of a further stay pending filing and disposition of a petition for certiorari, —— U. S. —— (1981) (REHNQUIST, J., in chambers), and two more deaths occurred thereafter.

[4] Lyons' motion for a preliminary injunction was heard on affidavits, depositions and government records.

[5] Statement of Officer Pascal K. Dionne (officer-in-charge of the Physical Training and Self-Defense Unit of the LAPD), App. 240–241.

[6] Statement of Officer Pascal K. Dionne, App. 259. These figures undoubtedly understate the frequency of the use of chokeholds since, as Officer Dionne, a witness for the City, testified, the figures compiled do not include all altercations between police officers and citizens. *Id.*, at 241. Officer Dionne's Statement does not define "altercation" and does not indicate when "altercation reports" must be filed by an officer.

The City does not maintain a record of injuries to suspects.

[7] The physiological effects of the chokeholds were described as follows by Dr. A. Griswold, an expert in pathology (App. 364–367):

"From a medical point of view, the bar arm control is extremely dangerous in an unpredictable fashion. Pressure from a locked forearm across the neck sufficient to compress and close the trachea applied for a sufficient period of time to cause unconsciousness from asphyxia must, to an anatomical certainty, also result in . . . a very high risk of a fractured hyoid bone or crushed larynx. The risk is substantial, but at the same time, unpredictable.

"It depends for one thing on which vertical portion of the neck the forearm pressure is exerted. . . .

"Another factor contributing to unpredictability is the reaction of the victim. . . . [The] pressure exerted in a bar arm control . . . can result in a laryngeal spasm or seizure which simply shuts off the trachial air passage, leading to death by asphyxiation. Also, it must result in transmission to the brain of nerve messages that there is immediate, acute danger of death. This transmission immediately sets up a 'flight or flee' syndrome wherein the body reacts violently to save itself or escape. Adrenalin output increases enormously; blood oxygen is switched to muscles and strong, violent struggle ensues which is to a great extent involuntary. From a medical point of view, there would be no way to distinguish this involuntary death struggle from a wilful, voluntary resistance. Thus, an instruction to cease applying the hold when 'resistance ceases' is meaningless.

"This violent struggle . . . increases the risk of permanent injury or death to the victim. This reserve may already be in a state of reduction by reason of cardiac, respiratory or other disease.

"The LAPD [operates under a] misconception . . . that the length of time for applying the hold is the sole measure of risk. This is simply not true. If sufficient force is applied, the larynx can be crushed or hyoid fractured with death ensuing, in seconds. An irreversible laryngeal spasm can also occur in seconds.

"From a medical point of view, the carotid control is extremely dangerous in a manner that is at least as equally unpredictable as the bar arm control.

". . . When applied with sufficient pressure, this control will crush the carotid sheath against the bony structure of the neck, foreseeably shutting down the supply of oxygenated blood to the brain and leading to unconsciousness in approximately 10 to 15 seconds.

"However, pressure on both carotid sheaths also results in pressure, if inadvertent or unintended, on both of the vagus nerves. The vagus nerves (right and left) arise in the brain and are composed of both sensory and motor fibers. . . . Stimulation of these nerves by pressure can activate reflexes within the vagus system that can result in immediate heart stoppage (cardiac arrest). . . . There is also evidence that cardiac arrest can result from simultaneous pressure on both vagus nerves regardless of the intensity or duration of the pressure."

[8] City's Opposition to Application for Preliminary Injunction, pp. 26, 30.

[9] City's Opening Brief, p. 33.

City's expert who has taught at the Los Angeles Police Academy for the past twelve years, admitted that officers are never told that the bar-arm control can cause death if applied for just two seconds. App. 388. Of the nine deaths for which evidence was submitted to the District Court, the average duration of the choke where specified was approximately 40 seconds.

C

In determining the appropriateness of a preliminary injunction, the District Court recognized that the City's policy is subject to the constraints imposed by the Due Process Clause of the Fourteenth Amendment. The Court found that "[d]uring the course of this confrontation, said officers, without provocation or legal justification, applied a *Department-authorized* chokehold which resulted in injuries to plaintiff." (Emphasis added). The Court found that the "City of Los Angeles and the Department authorize the use of these holds under circumstances where no one is threatened by death or grievous bodily harm." The Court concluded that the use of the chokeholds constitutes "deadly force," and that the City may not constitutionally authorize the use of such force "in situations where death or serious bodily harm is not threatened." On the basis of this conclusion, the District Court entered a preliminary injunction enjoining "the use of both the carotid-artery and bar arm holds under circumstances which do not threaten death or serious bodily injury."[10] As the Court of Appeals noted, "[a]ll the trial judge has done, so far, is to tell the city that its police officers may not apply life threatening strangleholds to persons stopped in routine police work unless the application of such force is necessary to prevent serious bodily harm to an officer." 656 F. 2d 417, 418 (1981).

II

At the outset it is important to emphasize that Lyons's entitlement to injunctive relief and his entitlement to an award of damages both depend upon whether he can show that the City's chokehold policy violates the Constitution. An indispensable prerequisite of municipal liability under 42 U. S. C. § 1983 is proof that the conduct complained of is attributable to an unconstitutional official policy or custom. *Polk Cty.* v. *Dodson*, 454 U. S. 312, 326 (1981); *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658, 694 (1978). It is not enough for a § 1983 plaintiff to show that the employees or agents of a municipality have violated or will violate the Constitution, for a municipality will not be held liable solely on a theory of *respondeat superior*. See *Monell*, *supra*, at 694.

The Court errs in suggesting that Lyons' prayer for injunctive relief in Count V of his first amended complaint concerns a policy that was not responsible for his injuries and that therefore could not support an award of damages. *Ante*, at n. 7. Paragraph 8 of the complaint alleges that Lyons was choked "without provocation, legal justification or excuse." Paragraph 13 expressly alleges that "[t]he Defendant Officers were carrying out *the official policies, customs and practices* of the Los Angeles Police Department and the City of Los Angeles," and that "*by virtue thereof*, defendant City is liable for the actions" of the officers. (Emphasis added.) These allegations are incorporated in each of the Counts against the City, including Count V.

There is no basis for the Court's assertion that Lyons has failed to allege "that the City either orders or authorizes application of the chokeholds where there is no resistance or other provocations." *Ante*, at n. 7. I am completely at a loss to understand how paragraphs 8 and 13 can be deemed insufficient to allege that the City's policy authorizes the use of chokeholds without provocation. The Court apparently finds Lyons' complaint wanting because, although it alleges that he was choked without provocation and that the officers acted pursuant to any official policy, it fails to allege *in haec verba* that the City's policy authorizes the choking of suspects without provocation. I am aware of no case decided since the abolition of the old common law forms of action, and the Court cites none, that in any way supports this crabbed construction of the complaint. A federal court is capable of concluding for itself that two plus two equals four.[11]

The Court also errs in asserting that even if the complaint sufficiently alleges that the City's policy authorizes the use of chokeholds without provocation, such an allegation is in any event "belied by the record made on the application for preliminary injunction." *Ante*, at n.7. This conclusion flatly contradicts the District Court's express factual finding, which was left undisturbed by the Court of Appeals, that the officers applied a "*Department-authorized* chokehold which resulted in injuries to plaintiff." (Emphasis added.) The City does not contend that this factual finding is clearly erroneous.[12]

In sum, it absolutely clear that Lyons' requests for damages and for injunctive relief call into question the constitutionality of the City's policy concerning the use of chokeholds. If he does not show that that policy is unconstitutional, he will be no more entitled to damages than to an injunction.

III

Since Lyons' claim for damages plainly gives him standing, and since the success of that claim depends upon a demonstration that the City's chokehold policy is unconstitutional, it is beyond dispute that Lyons has properly invoked the District Court's authority to adjudicate the constitutionality of the City's chokehold policy. The dispute concerning the constitutionality of that policy plainly presents a "case or controversy" under Article III. The Court nevertheless holds that a federal court has no power under Article III to adjudicate Lyons' request, in the same lawsuit, for injunctive relief with respect to that very policy. This anomalous result is not supported either by precedent or by the the fundamental concern underlying the standing requirement. Moreover, by fragmenting a single claim into multiple claims for particular types of relief and requiring a separate showing of

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[10] The preliminary injunction provided that the City itself could lift the injunction by obtaining court approval of a training program, and also required the city to keep records of all uses of chokeholds and to make those records available.

The District Court refrained from determining the precise nature of the City's policy given the limited nature of its inquiry at the preliminary injunction stage. *Brown* v. *Chote*, 411 U. S. 452, 456 (1973).

[11] Contrary to the Court's suggestion, *ante*, at n.7, there is clearly no inconsistency between the allegation in ¶ 8 of the complaint that Lyons was choked "without provocation, legal justification or excuse," and the allegations that the City authorizes chokeholds "in situations where [officers] are threatened by far less than deadly force." ¶ ¶ 20, 23.

[12] Even if the issue were properly before us, I could not agree that this Court should substitute its judgment for that of the District Court. One of the City's own training officers testified that an officer is authorized to use a chokehold whenever he "feels that there's about to be a bodily attack made on him." App. 381. This testimony indicates that an officer is authorized to use a chokehold whenever he subjectively perceives a threat, regardless of whether the suspect has done anything to provide an objective basis for such a perception. The District Court's finding is not refuted by the statement of the City's policy which is set forth in a LAPD manual, *ante*, at 14, for municipal liability under § 1983 may be predicated on proof of an official custom whether or not that custom is embodied in a formal policy. *Monell*, *supra*, at 694.

standing for each form of relief, the decision today departs from this Court's traditional conception of standing and of the remedial powers of the federal courts.

A

It is simply disingenuous for the Court to assert that its decision requires "[n]o extension" of *O'Shea* v. *Littleton*, 414 U. S. 488 (1974), and *Rizzo* v. *Goode*, 423 U. S. 362 (1976). *Ante*, at 8. In contrast to this case *O'Shea* and *Rizzo* involved disputes focusing solely on the threat of future injury which the plaintiffs in those cases alleged they faced. In *O'Shea* the plaintiffs did not allege past injury and did not seek compensatory relief.[13] In Rizzo, the plaintiffs sought only declaratory and injunctive relief and alleged past instances of police misconduct only in an attempt to establish the substantiality of the threat of future injury. There was similarly no claim for damages based on past injuries in *Ashcroft* v. *Mattis*, 431 U. S. 171 (1977), or *Golden* v. *Zwickler*, 394 U. S. 103 (1969),[14] on which the Court also relies.

These decisions do not support the Court's holding today. As the Court recognized in *O'Shea*, standing under Article III is established by an allegation of "threatened *or* actual injury." *Id.*, at 493, quoting *Linda R.S.* v. *Richard D.*, 410 U. S. 614, 617 (1973) (emphasis added). See also 414 U. S., at 393, n. 2. Because the plaintiffs in *O'Shea*, *Rizzo*, *Mattis*, and *Zwickler* did not seek to redress past injury, their standing to sue depended entirely on the risk of future injury they faced. Apart from the desire to eliminate the possibility of future injury, the plaintiffs in those cases had no other personal stake in the outcome of the controversies.

By contrast, Lyons' request for prospective relief is coupled with his claim for damages based on past injury. In addition to the risk that he will be subjected to a chokehold in the future, Lyons has suffered past injury.[15] Because he has a live claim for damages, he need not rely solely on the threat of future injury to establish his personal stake in the outcome of the controversy.[16] In the cases relied on by the majority, the Court simply had no occasion to decide whether a plaintiff who has standing to litigate a dispute must clear a separate standing hurdle with respect to each form of relief sought.[17]

B

The Court's decision likewise finds no support in the fundamental policy underlying the Article III standing requirement—the concern that a federal court not decide a legal issue if the plaintiff lacks a sufficient "personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Baker* v. *Carr*, 369 U. S. 186, 204 (1962). As this Court stated in *Flast* v. *Cohen*, 392 U. S. 83, 101 (1968), "the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." See also *Valley Forge*, *supra*, at —— (standing requirement ensures that "the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action").

Because Lyons has a claim for damages against the City, and because he cannot prevail on that claim unless he demonstrates that the City's chokehold policy violates the Constitution, his personal stake in the outcome of the controversy adequately assures an adversary presentation of his challenge to the constitutionality of the policy.[18] Moreover, the resolution of this challenge will be largely dispositive of his requests for declaratory and injunctive relief. No doubt the requests for injunctive relief may raise additional questions. But these questions involve familiar issues relating to the ap-

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[13] Although counsel for the plaintiffs in *O'Shea* suggested at oral argument that certain plaintiffs' had been exposed to illegal conduct in the past, in fact "[n]o damages were sought against the petitioner's, . . . nor were any specific instances involving the individually named respondents set forth in the claim against these judicial officers." *Id.*, at 492. The Court referred to the absence of past injury repeatedly. See *id.*, at 492, 495, and n. 3.

[14] The plaintiff in *Mattis* did originally seek damages, but after the District Court found that the defendant officers were shielded by the good-faith immunity, he pursued only prospective relief. Although we held that the case had been mooted by the elimination of the damage claim, we in no way suggested that the plaintiff's requests for declaratory and injunctive relief could not have been entertained had his damage claim remained viable. We held only that where a plaintiff's "primary claim of a present interest in the controversy is that he will obtain emotional satisfaction from a ruling that his son's death was wrongful," 431 U. S., at 172 (footnote omitted), he does not have the personal stake in the outcome reviewed by Article III was not satisfied. In *Zwickler* the plaintiff did not even allege that he would or might run for office again; he merely asserted that he "can be 'a candidate for Congress again.'" 394 U. S., at 109. We held that this mere logical possibility was insufficient to present an actual controversy.

[15] In *Lankford* v. *Gelston*, 364 F. 2d 197 (CA4 1966) (en banc), which we cited with approval in *Allee* v. *Medrano*, 416 U. S. 802, 816, n. 9 (1974), the Fourth Circuit found standing on facts indistinguishable from this case. In *Lankford*, the Court of Appeals held that four Negro families who had been subjected to an illegal house search were entitled to seek injunctive relief against the Baltimore police department's policy of conducting wholesale searches based only on uncorroborated anonymous tips, even though the plaintiffs there did not claim that they were more likely than other Negro residents of the city to be subjected to an illegal search in the future.

[16] In *O'Shea* itself the Court suggested that the absence of a damage claim was highly pertinent to its conclusion that the plaintiff had no standing. The Court noted that plaintiffs' "claim for relief against the State's Attorney[,] where specific instances of misconduct with respect to particular individuals *are* alleged," 414 U. S., at 495 (emphasis added), stood in "sharp contrast" to their claim for relief against the magistrate and judge, which did not contain similar allegations. The plaintiffs did seek damages against the State's Attorney. See *Spomer* v. *Littleton*, 414 U. S. 514, 518, n. 5 (1974). Like the claims against the State's Attorney in *O'Shea*, Lyons' claims against the City allege both past injury and the risk of future injury. Whereas in *O'Shea* the Court acknowledged the significance for standing purposes of past injury, the Court today inexplicably treats Lyons' past injury for which he is seeking redress as wholly irrelevant to the standing inquiry before us.

[17] The Court's reliance on *Rizzo* is misplaced for another reason. In *Rizzo* the Court concluded that the evidence presented at trial failed to establish an "affirmative link between the occurrence of various incidents of police misconduct and the adoption of any plan or policy by [defendants]." 423 U. S., at 362. Because the misconduct being challenged was, in the Court's view, the result of the behavior of unidentified officials not named as defendants rather than any policy of the named defendants—the City Managing Director, and the Police Commissioner, *id.*, at 372—the Court had "serious doubts" whether a case or controversy existed between the plaintiffs and those defendants. Here, by contrast, Lyons has clearly established a case or controversy between himself and the City concerning the constitutionality of the City's policy. See *supra*, at 8–11. In *Rizzo* the Court specifically distinguished those cases where a case or controversy was found to exist because of the existence of an official policy responsible for the past or threatened constitutional deprivations. *Id.*, at 373–374, distinguishing *Hague* v. *CIO*, 307 U. S. 496 (1939); *Allee* v. *Medrano*, 416 U. S. 802 (1974); *Lankford* v. *Gelston*, 364 F. 2d 197 (CA4 1966).

[18] It is irrelevant that the District Court has severed Lyons' claim for damages from his claim for injunctive relief. *Ante*, at n. 6. If the District Court, in deciding whether to issue an injunction, upholds the City's policy against constitutional attack, this ruling will be *res judicata* with respect to Lyons' claim for damages. The severance of the claims therefore does not diminish Lyons' incentive to establish the unconstitutionality of the policy.

It is unnecessary to decide here whether the standing of a plaintiff who alleges past injury that is legally redressable depends on whether he specifically seek damages. See *Lankford* v. *Gelsten*, 364 F. 2d 197 (CA4 1966) (en banc) (plaintiffs who did not seek damages permitted to seek injunctive relief based on past injury). See n. 15, *supra*.

propriateness of particular forms of relief, and have never been thought to implicate a litigant's standing to sue. The denial of standing separately to seek injunctive relief therefore cannot be justified by the basic concern underlying the Article III standing requirement.[19]

C

By fragmenting the standing inquiry and imposing a separate standing hurdle with respect to each form of relief sought, the decision today departs significantly from this Court's traditional conception of the standing requirement and of the remedial powers of the federall courts. We have never required more than that a plaintiff have standing to litigate a claim. Whether he will be entitled to obtain particular forms of relief should he prevail has never been understood to be an issue of standing. In determining whether a plaintiff has standing, we have always focused on his personal stake in the outcome of the controversy, not on the issues sought to be litigated, *Flast* v. *Cohen*, 392 U. S. 83, 99 (1968), or the "precise nature of the relief sought." *Jenkins* v. *McKeithen*, 395 U. S. 411, 423 (1969) (opinion of MARSHALL, J., joined by Warren, C. J., and BRENNAN, J.).

1

Our cases uniformly state that the touchstone of the Article III standing requirement is the plaintiff's personal stake in the underlying dispute, not in the particular types of relief sought. Once a plaintiff establishes a personal stake in a dispute, he has done all that is necessary to "invok[e] the court's authority . . . to challenge the action sought to be adjudicated." *Valley Forge Christian College* v. *Americans United For Separation of Church and State*, —— U. S. ——, —— (1982). See, *e. g.*, *Flast v. Cohen*, 392 U. S., at 101 (stake in "the dispute to be adjudicated in the lawsuit"); *Eisenstadt* v. *Baird*, 405 U. S. 438, 443 (1972) (plaintiff must have "sufficient interest in challenging the statute's validity").

The personal stake of a litigant depends, in turn, on whether he has alleged a legally redressable injury. In determining whether a plaintiff has a sufficient personal stake in the outcome of a controversy, this Court has asked whether he "personally has suffered some actual *or* threatened injury," *Gladstone Realtors* v. *Village of Bellwood*, 411 U. S. 91, 99 (1979) (emphasis added), whether the injury "fairly can be traced to the challenged action." *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 41 (1976), and whether plaintiff's injury "is likely to be redressed by a favorable decision." *Simon*, *supra*, 426 U. S., at 38. See also *Duke Power Co.* v. *Carolina Env. Study Group*, 438 U. S., at 74 (1978); *Warth* v. *Seldin*, 422 U. S. 490, 508 (1975). These well-accepted criteria for determining whether a plaintiff has established the requisite personal stake do not fragment the standing inquiry into a series of discrete questions about the plaintiff's stake in each of the particular types of relief sought. Quite the contrary, they ask simply whether the plaintiff has a sufficient stake in seeking a judicial resolution of the controversy.

Lyons has alleged past injury and a risk of future injury and has linked both to the City's chokehold policy. Under established principles, the only additional question in determining standing under Article III is whether the injuries he has alleged can be remedied or prevented by *some* form of judicial relief. Satisfaction of this requirement ensures that the lawsuit does not entail the issuance of an advisory opinion without the possibility of any judicial relief, and that the exercise of a court's remedial powers will actually redress the alleged injury.[20] Therefore Lyons needs to demonstrate only that, should he prevail on the merits, "the exercise of the Court's remedial powers would redress the claimed injuries." *Duke Power Co.*, *ibid* (emphasis added). See also *Warth* v. *Seldin*, 422 U. S., at 508; *Simon*, *supra*, 426 U. S., at 38. Lyons has easily made this showing here, for monetary relief would plainly provide redress for his past injury, and prospective relief would reduce the likelihood of any future injury. Nothing more has ever been required to establish standing.

The Court's decision turns these well accepted principles on their heads by requiring a separate standing inquiry with respect to each request for relief. Until now, questions concerning remedy were relevant to the threshhold issue of standing only in the limited sense that some relief must be possible. The approach adopted today drastically alters the inquiry into remedy that must be made to determine standing.

2

The Court's fragmentation of the standing inquiry is also inconsistent with the way the federal courts have treated remedial issues since the merger of law and equity. The federal practice has been to reserve consideration of the appropriate relief until after a determination of the merits, not to foreclose certain forms of relief by a ruling on the pleadings.

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[19] The Court errs in asserting that Lyons has no standing to seek injunctive relief because the injunction prayed for in Count V reaches suspects who, unlike Lyons, offer resistance or attempt to escape. *Ante*, at n. 7. Even if a separate inquiry into Lyons' standing to seek injunctive relief as opposed to damages were appropriate, and even if he had no standing to seek the entire injunction he requests, it would not follow that he had no standing to seek any injunctive relief. Even under the Court's view, Lyons presumably would have standing to seek to enjoin the use of chokeholds without provocation. There would therefore be no justification for reversing the judgment below in its entirety.

The Court's reliance on the precise terms of the injunction sought in Count V is also misplaced for a more fundamental reason. Whatever may be said for the Court's novel rule that a separate showing of standing must be made for each form of relief requested, the Court is simply wrong in assuming that the scope of the injunction prayed for raises a question of standing. A litigant is entitled to advance any substantive legal theory which would entitle him to relief. Lyons' entitlement to relief may ultimately rest on the principle that a municipality may not authorize the use of chokeholds absent a threat of deadly force. This principle, which the District Court tentatively embraced in issuing the preliminary injunction, would support the entire injunction sought in Count V. Alternatively, Lyons' entitlement to relief may rest on some narrower theory. If Lyons prevails, the appropriateness of the injunction prayed for in Count V will depend on the legal principle upon which the District Court predicates its decision. It may well be judicious for the District Court, in the exercise of its discretion, to rest its decision on a theory that would not support the full scope of the injunction that Lyons requests. But this has nothing whatsoever to do with Lyons' standing.

[20] This limited inquiry into remedy, which addresses two *jurisdictional* concerns, provides no support for the Court's requirement that standing be separately demonstrated with respect to each particular form of relief sought. First, a court must have the power to fashion *some* appropriate remedy. This concern, an aspect of the more general case or controvery requirement, reflects the view that the adjudication of rights which a court is powerless to enforce is tantamount to an advisory opinion. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 241 (1937) ("[The controversy] must be a real and substantial [one] *admitting of specific relief* through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.") (emphasis added). Second, a court must determine that there is an available remedy which will have a "substantial probability," *Warth* v. *Seldin*, 422 U. S. 490, 508 (1975), of redressing the plaintiff's injury. This latter concern is merely a recasting of the causal nexus, *supra*, at 16, that must exist between the alleged injury and the action being challenged, and ensures that the granting of judicial relief will not be an exercise in futility. See *Duke Power Co.* v. *Carolina Env. Study Group*, 438 U. S. 59, 74 (1978). These considerations are summarized by the requirement that a plaintiff need only allege an injury that is "legally redressable." *Jenkins*, *supra*, at 424 (emphasis added).

The prayer for relief is no part of the plaintiff's cause of action. See 2A Moore's Federal Practice ¶8.18, at 8–216, and n. 13 (1981 rev.), and cases cited therein; Wright & Miller, Federal Practice and Procedure § 2664. Rather, "[t]he usual rule is that where legal rights have been invaded and a cause of action is available, a federal court may use any available remedy to make good the wrong done." *Bell* v. *Hood*, 327 U. S. 678, 684 (1946) (footnote omitted).

Rule 54(c) of the Federal Rules of Civil Procedure specifically provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." The question whether a plaintiff has stated a claim turns not on "whether [he] has asked for the proper remedy but whether he is entitled to *any* remedy." Wright & Miller, Federal Practice and Procedure § 1664. This is fully consistent with the approach taken in our standing cases. *Supra*, at 17–18 and n. 18.

The Court provides no justification for departing from the traditional treatment of remedial issues and demanding a separate threshold inquiry into each form of relief a plaintiff seeks. It is anomalous to require a plaintiff to demonstrate "standing" to seek each particular form of relief requested in the complaint when under Rule 54(c) the remedy to which a party may be entitled need not even be demanded in the complaint.[21] Rule 54(c). See *Holt Civic Club* v. *Tuscaloosa*, 439 U. S. 60, 65–66 (1978); *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 424 (1975). The traditional federal practice is a sound one. Even if it appears highly unlikely at the outset of a lawsuit that a plaintiff will establish that he is entitled to a particular remedy, there are dangers inherent in any doctrine that permits a court to foreclose any consideration of that remedy by ruling on the pleadings that the plaintiff lacks standing to seek it. A court has broad discretion to grant appropriate equitable relief to protect a party who has been injured by unlawful conduct, as well as members of the class, from future injury that may occur if the wrongdoer is permitted to continue his unlawful actions. Where, as here, a plaintiff alleges both past injury and a risk of future injury and presents a concededly substantial claim that a defendant is implementing an unlawful policy, it will rarely be easy to decide with any certainty at the outset of a lawsuit that no equitable relief would be appropriate under any conceivable set of facts that he might establish in support of his claim.

In sum, the Court's approach to standing is wholly inconsistent with well established standing principles and clashes with our long-standing conception of the remedial powers of a court and what is necessary to invoke the authority of a court to resolve a particular dispute.

IV

Apart from the question of standing, the only remaining question presented in the petition for certiorari is whether the preliminary injunction issued by the District Court must be set aside because it "constitute[s] a substantial interference in the operation of a municipal police department." Petition for Certiorari i.[22] In my view it does not.

In the portion of its brief concerning this second question, the City argues that the District Court ignored the principles of federalism set forth in *Rizzo* v. *Goode*, 423 U. S. 362 (1976). Brief for the City of Los Angeles 40–47. The City's reliance on *Rizzo* is misplaced. That case involved an injunction which "significantly revised the internal procedures of the Philadelphia police department." *Id.*, at 379. The injunction required the police department to adopt "a comprehensive program for dealing adequately with civilian complaints" to be formulated in accordance with extensive "guidelines" established by the district court. *Id.*, at 369–370, quoting 357 F. Supp. 1289, 1321 (1973). Those guidelines specified detailed revisions of police manuals and rules of procedure, as well as the adoption of specific procedures for processing, screening, investigating and adjudicating citizen complaints. In addition, the district court supervised the implementation of the comprehensive program, issuing detailed orders concerning the posting and distribution of the revised police procedures and the drawing up of a "Citizen's Complaint Report" in a format designated by the court. The district court also reserved jurisdiction to review the progress of the police department. 423 U. S., at 361, n. 2. This Court concluded that the sweeping nature of the injunctive relief was inconsistent with "the principles of federalism." 423 U. S., at 380.

The principles of federalism simply do not preclude the limited preliminary injunction issued in this case. Unlike the permanent injunction at issue in *Rizzo*, the preliminary injunction involved here entails no federal supervision of the LAPD's activities. The preliminary injunction merely forbids the use of chokeholds absent the threat of deadly force, permitting their continued use where such a threat does exist. This limited ban takes the form of a preventive injunction, which has traditionally been regarded as the least intrusive form of equitable relief. Moreover, the City can remove the ban by obtaining approval of a training plan. Although the preliminary injunction also requires the City to provide records of the uses of chokeholds to respondent and to allow the court access to such records, this requirement is hardly onerous, since the LAPD already maintains records concerning the use of chokeholds.

A district court should be mindful that "federal-court intervention in the daily operation of a large city's police department, . . . is undesirable and to be avoided if at all possible." *Rizzo, supra*, at 381 (BLACKMUN, J., dissenting).[23] The modest interlocutory relief granted in this case differs markedly, however, from the intrusive injunction involved in *Rizzo*, and simply does not implicate the federalism concerns that arise when a federal court undertakes to "supervise the functioning of the police department." 423 U. S., at 380.

V

Apparently because it is unwilling to rely solely on its unprecedented rule of standing, the Court goes on to conclude that, even if Lyons has standing, "[t]he equitable remedy is unavailable." *Ante*, at 14–15. The Court's reliance on this

[21] It is not clear from the Court's opinion whether the District Court is wholly precluded from granting *any* form of declaratory or injunctive relief, even if it ultimately holds that Lyons should prevail on his claim for damages against the City on the ground that the City's chokehold policy is unconstitutional and is responsible for his injury.

[22] Question 1 of the Petition raised the question of Lyons' standing. Question 2 of the Petition states: "Does a federal court order constitute a substantial interference in the operation of a municipal police department where it (a) modifies policies concerning use of force and (b) takes control of such department's training and reporting systems relative to a particular force technique?"

[23] Of course, municipalities may be enjoined under § 1983, *Monell*, *supra*, and this Court has approved of the issuance of injunctions by federal courts against state or municipal police departments where necessary to prevent the continued enforcement of unconstitutional official policies. See, *e. g.*, *Allee* v. *Medrano*, 416 U. S. 802 (1974); *Hague* v. *CIO*, 307 U. S. 496 (1939); *Lankford* v. *Gelston*, 364 F. 2d 197 (CA4 1966) (en banc), cited with approval in *Allee*, *supra*, at 816. Although federalism concerns are relevant in fashioning an appropriate relief, we have stated repeatedly that a federal court retains the power to order any available remedy necessary to afford full relief for the invasion of legal rights. See, *e. g.*, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 14 (1971); *Bell* v. *Hood*, 327 U. S. 678, 684 (1946).

alternative ground is puzzling for two reasons.

If, as the Court says, Lyons lacks standing under Article III, the federal courts have no power to decide his entitlement to equitable relief on the merits. Under the Court's own view of Article III, the Court's discussion in Part V is purely an advisory opinion.

In addition, the question whether injunctive relief is available under equitable principles is simply not before us. We granted certiorari only to determine whether Lyons has standing and whether, if so, the preliminary injunction must be set aside because it constitutes an impermissible interference in the operation of a municipal police department. We did not grant certiorari to consider whether Lyons satisfies the traditional prerequisites for equitable relief. See note 22, *supra*.

Even if the issue had been properly raised, I could not agree with the Court's disposition of it. With the single exception of *Rizzo* v. *Goode*, *supra*,[24] all of the cases relied on by the Court concerned injunctions against state criminal proceedings. The rule of *Younger* v. *Harris*, 401 U. S. 37 (1971), that such injunctions can be issued only in extraordinary circumstances in which the threat of injury is "great and immediate," *id.*, at 44, reflects the venerable rule that equity will not enjoin a criminal prosecution, the fact that constitutional defenses can be raised in such a state prosecution, and an appreciation of the friction that injunctions against state judicial proceedings may produce. See *id.*, at 44; *Steffel* v. *Thompson*, 415 U. S. 452, 462 (1974); 28 U. S. C. § 2283.

Our prior decisions have repeatedly emphasized that where an injunction is not directed against a state criminal or quasi-criminal proceeding, "the relevant principles of equity, comity, and federalism" that underlie the *Younger* doctrine "have little force." *Steffel* v. *Thompson*, *supra*, at 462, citing *Lake Carrier's Assn.* v. *MacMullan*, 406 U. S. 498, 509 (1972). Outside the special context in which the *Younger* doctrine applies, we have held that the appropriateness of injunctive relief is governed by traditional equitable considerations. See *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 930 (1975). Whatever the precise scope of the *Younger* doctrine may be, the concerns of comity and federalism that counsel restraint when a federal court is asked to enjoin a state criminal proceeding simply do not apply to an injunction directed solely at a police department.

If the preliminary injunction granted by the District Court is analyzed under general equitable principles, rather than the more stringent standards of *Younger* v. *Harris*, it becomes apparent that there is no rule of law that precludes equitable relief and requires that the preliminary injunction be set aside. "In reviewing such interlocutory relief, this Court may only consider whether issuance of the injunction constituted an abuse of discretion." *Brown* v. *Chote*, 411 U. S. 452, 457 (1973).

The District Court concluded, on the basis of the facts before it, that Lyons was choked without provocation pursuant to an unconstitutional City policy. *Infra*, at ——. Given the necessarily preliminary nature of its inquiry, there was no way for the District Court to know the precise contours of the City's policy or to ascertain the risk that Lyons, who had alleged that the policy was being applied in a discriminatory manner, might again be subjected to a chokehold. But in view of the Court's conclusion that the unprovoked choking of Lyons was pursuant to a City policy, Lyons has satisfied "the usual basis for injunctive relief, 'that there exists some cognizable danger of recurrent violation.'" *Rondeau* v. *Mosinee Paper Corp.*, 422 U. S. 40, 50 (1975), citing *United States* v. *W.T. Grant Co.*, 345 U. S. 629, 633 (1953). The risk of serious injuries and deaths to other citizens also supported the decision to grant a preliminary injunction. Courts of equity have much greater latitude in granting injunctive relief "in furtherance of the public interest . . . than when only private interests are involved." *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 552 (1937). See Wright & Miller, *supra*, at § 2948; 7 Moore's Federal Practice Pt. 2, at ¶ 65.04[1]. In this case we know that the District Court would have been amply justified in considering the risk to the public, for after the preliminary injunction was stayed, five additional deaths occurred prior to the adoption of a moratorium. See note 3, *supra*. Under these circumstances, I do not believe that the District Court abused its discretion.

Indeed, this Court has approved of a decision that directed issuance of a *permanent* injunction in a similar situation. See *Lankford* v. *Gelston*, *supra*, cited with approval in *Allee* v. *Medrano*, 416 U. S. 802, 816 n. 9 (1974). See n. 15, *supra*. In *Lankford*, citizens whose houses had been searched solely on the basis of uncorroborated, anonymous tips sought injunctive relief. The Fourth Circuit, sitting *en banc*, held that the plaintiffs were entitled to an injunction against enforcement of the police department policy authorizing such searches, even though there was no evidence that their homes would be searched in the future. Lyons is no less entitled to seek injunctive relief. To hold otherwise is to vitiate "one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable." *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82 (1902).

Here it is unnecessary to consider the propriety of a permanent injunction. The District Court has simply sought to protect Lyons and other citizens of Los Angeles pending a disposition of the merits. It will be time enough to consider the propriety of a permanent injunction when and if the District Court grants such relief.

VI

The Court's decision removes an entire class of constitutional violations from the equitable powers of a federal court. It immunizes from prospective equitable relief any policy that authorizes persistent deprivations of constitutional rights as long as no individual can establish with substantial certainty that he will be injured, or injured again, in the future. THE CHIEF JUSTICE asked in *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 419 (1971) (dissenting opinion), "what would be the judicial response to a police order authorizing 'shoot to kill' with respect to every fugitive?" His answer was that it would be "easy to predict our collective wrath and outrage." *Ibid.* We now learn that wrath and outrage cannot be translated into an order to cease the unconstitutional practice, but only an award of damages to those who are victimized by the practice and live to sue and to the survivors of those who are not so fortunate. Under the view expressed by the majority today, if the police adopt a policy of "shoot to kill," or a policy of shooting one out of ten suspects, the federal courts will be powerless to enjoin its continuation. Compare *Linda R. S.* v. *Richard D.*, 410 U. S. 614, 621 (1973) (WHITE, J., dissenting). The federal judicial power is now limited to levying a toll for such a systematic constitutional violation.

FREDERICK N. MERKIN, Senior Assistant City Attorney, Los Angeles, Calif. (IRA REINER, City Attorney and LEWIS N. UNGER, Deputy City Attorney, with him on the brief) for petitioner; MICHAEL R. MITCHELL, Woodland Hills, Calif. (FRED OKRAND and CHARLES S. SIMS, with him on the brief) for respondent.

[24] As explained above, *Rizzo* v. *Goode* does not support a decision barring Lyons from obtaining any injunctive relief, for that case involved an injunction which entailed judicial supervision of the workings of a municipal police department, not simply the sort of preventive injunction that Lyons seeks. *Supra*, at ——.

STATEMENT IN OPPOSITION TO PRESIDENT REAGAN'S EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

On December 4, 1981, President Ronald Reagan signed the Executive Order on Intelligence Activities, which provides the basic framework for the activities of all U.S. intelligence agencies. The Reagan order was issued after an eight-month drafting process marred by administration secrecy and widespread criticism from Congress, the public and the press.

The Reagan order replaces President Carter's Executive Order on Intelligence Activities, signed in 1978, and is similar in structure and content. The Carter order was criticized when it was issued, on the grounds that it did not provide adequate safeguards of civil liberties and constitutional rights. Such safeguards had been recommended by the Church Committee, Pike Committee and Rockefeller Commission which investigated intelligence agency abuses in the mid-1970's.

The Reagan order eases several of the restrictions that were contained in the Carter order. For example, for the first time the CIA is authorized to conduct covert operations within the U.S., provided that such activities "are not intended to influence United States political processes, public opinion, policies or media."

In response to the new Executive Order, the Campaign for Political Rights released the following statement by 111 organizational representatives.

The President's issuance of a new Executive Order governing the conduct of the intelligence agencies has raised serious questions concerning this administration's commitment to the protection of civil liberties and constitutional rights. Following an eight-month drafting process, characterized by secrecy and disturbing assertions of unlimited Presidential authority, the President has promulgated guidelines which fall far short of the restrictions on intelligence activities that our recent history clearly mandates.

The absence of public debate on these guidelines, coupled with the frightening proposals put forth during the drafting process, suggest once again that the standards of intelligence agency conduct should not be determined solely by Presidential directive. The potential civil liberties implications of intelligence activities necessitate that the applicable standards be permanent, consistent with constitutional requirements, and not subject to revision with each change of administration. Otherwise, the fundamental rights of American citizens and others protected by the Constitution are subject to periodic revision, and eventual erosion.

We hereby call upon the President and the Congress to reexamine the process of enacting these important guidelines, and urge that fundamental rights not be left to the mercy of shifting political winds. Illegalities of the intelligence agencies are of continuing concern. We strongly oppose any move to unleash these agencies to the detriment of constitutional rights.

American-Arab Anti-Discrimination Committee
Jim Zogby, Organizing Director

American Association of University Women
Mary Purcell, President

American Civil Liberties Union
Jerry Berman, Legislative Counsel

American Committee on Africa
Jennifer Davis, Executive Director

American Friends Service Committee
John A. Sullivan, Associate Executive Secretary

Americans for Common Sense
George Cunningham, Executive Director

Americans for Democratic Action
Leon Shull, National Director

Association of Arab-American University Graduates, Inc.
Ziad A. Fadel, Vice President, Detroit

Association for Community Based Education
Chris Zachariadis, Executive Director

Association of Community Organizations for Reform Now
Madeline Adamson, National Representative

Authors League of America
Irwin Carp, Counsel

Center for Concern
Peter Henriot, Director

Center for Development Policy
Lindsay Mattison, Director

Center for National Security Studies
Morton Halperin, Director

Center for Third World Organizing

Christian Church (Disciples of Christ)
A. Garnett Day, Director, Church and Community

Christic Institute
Bill Davis, Executive Director

Church Coalition for Human Rights in the Philippines
Dante Simbulan, Executive Director

Church of Scientology, National Commission on Law Enforcement and Social Justice
Cindy Ford, Associate Director

Church Women United
Charlene Muir, Vice-President for Ecumenical Action

Citizens Energy Project
Scott Denman, Senior Researcher

Clergy and Laity Concerned
Mark Harrison, Human Rights Coordinator

Coalition of American Public Employees
James Farmer, Executive Director

Commission for Racial Justice of the United Church of Christ
Toni Killings, Director, Washington Field Office

Commission on Social Action for Reform Judaism
Rabbi David Saperstein, Director

Committee for Public Justice
Nancy Kramer, Executive Director

Committee in Solidarity with People of El Salvador
Heidi Tarver, Coordinator

Consumer Federation of America
Steve Brobeck, Executive Director

Council on Hemispheric Affairs
Larry Birns, Director

Council on International and Public Affairs
Wade Morehouse, President

Chicago Committee to Defend the Bill of Rights
Rachel Rosen DeGolia, Director

Chicago Political Surveillance Litigation and Education Project
Richard Gutman, Director

Children's Foundation
Barbara Bode, President

Counterspy
John Kelly, Editor

CovertAction Information Bulletin
Ellen Ray, Bill Schaap, Louis Wolf, Co-Editors

Critical Mass Energy Project
Anna Gyorgy, Director

Defenders of Wildlife
Toby Cooper

Democratic Socialist Organizing Committee
Michael Harrington, Chairman

The Development Group for Alternative Policies
Steve Hellinger, Co-director

Disarm Education Fund
Ramsey Clark, Chairman

Ecumenical Program for Interamerican Communication and Action
Phil Wheaton, Director

Environmental Action
Elizabeth A. Davenport, Coordinator

Environmental Action Foundation
Claudia Comins, Director

Environmentalists for Full Employment
Jordan Barab, Organizer

Environmental Policy Center
Louise Dunlap, Executive Director

Freedom of Information Clearinghouse
Katherine Meyer, Director

Friends Committee on National Legislation
Ruth Flower, Legislative Secretary

Friends of the Earth
Rafe Pomeranz, President

Friends of the Filipino People
Tim McGloin, National Coordinator

Fund for Constitutional Government
Anne B. Zill, President

Fund for New Priorities in America
David Thompson, Director

Government Accountability Project
Louis Clark, Director
Tom Devine, Legal Director

Indian Law Resource Center
Robert T. Coulter, Executive Director

Institute for Southern Studies
Liz Wheaton

International Longshoremen's and Warehousemen's Union
James R. Herman, President

International Voluntary Services
John Rigby, Executive Director

Jesuit Social Ministries, National Office
Ted Svern, Associate Director

Karen Silkwood Fund
Sara Nelson, Project Director

Libertarian Party
Eric O'Keefe, National Director

Lutheran Council in the USA - Office for Governmental Affairs
Charles V. Bergstrom, Executive Director

Mennonite Central Committee - Peace Section, Washington Office
Delton Franz, Director

Middle East Research and Information Project
Joe Stork, Staff Editor

by the Secretary of the Treasury in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Committee shall terminate on December 31, 1982, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
November 10, 1981.

Executive Order 12333 of December 4, 1981

United States Intelligence Activities

46 F.R. 59941

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Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

Part 1

Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort

1.1 *Goals.* The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 *The National Security Council.*

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 *National Foreign Intelligence Advisory Groups.*

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

(1) Production, review and coordination of national foreign intelligence;

(2) Priorities for the National Foreign Intelligence Program budget;

(3) Interagency exchanges of foreign intelligence information;

(4) Arrangements with foreign governments on intelligence matters;

(5) Protection of intelligence sources and methods;

(6) Activities of common concern; and

(7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 *The Intelligence Community.* The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1.5 *Director of Central Intelligence.* In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 *Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.*

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1.7 *Senior Officials of the Intelligence Community.* The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1.8 *The Central Intelligence Agency.* All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 *The Department of State.* The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 *The Department of the Treasury.* The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 *The Department of Defense.* The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relation-

ships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 *Intelligence Components Utilized by the Secretary of Defense.* In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) *Defense Intelligence Agency,* whose responsibilities shall include;

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) *National Security Agency,* whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) *Offices for the collection of specialized intelligence through reconnaissance programs,* whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps,* whose responsibilities shall include:

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense.* If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 *The Department of Energy.* The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 *The Federal Bureau of Investigation.* Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

Part 2

Conduct of Intelligence Activities

2.1 *Need.* Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 *Collection of Information.* Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of

the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2.4 *Collection Techniques.* Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present of former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 *Attorney General Approval.* The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.6 *Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2.7 *Contracting.* Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not

reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 *Consistency With Other Laws.* Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 *Undisclosed Participation in Organizations Within the United States.* No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 *Human Experimentation.* No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

Part 3

General Provisions

3.1 *Congressional Oversight.* The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

3.2 *Implementation.* The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in

instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

3.3 *Procedures.* Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

3.4 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visably present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community* and *agencies within the Intelligence Community* refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(3) The Defense Intelligence Agency (DIA);

(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

(1) The programs of the CIA;

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnais-

sance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 *Purpose and Effect.* This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 *Revocation.* Executive Order No. 12036[59] of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

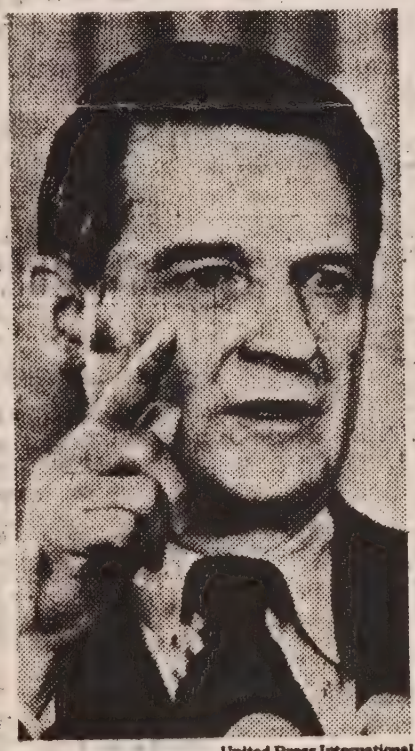
Ronald Reagan

THE WHITE HOUSE,
December 4, 1981.

59. 1980 U.S.Code Cong. &. Adm.News, Bd. Vol., p. 9642.

The New York Times, June 25, 1982, page B14, column 5

Rules on F.B.I.'s Surveillance Of Political Groups to Change



United Press International

William H. Webster

WASHINGTON, June 24 (UPI) — Guidelines restricting spying on domestic political organizations by the Federal Bureau of Investigation are about to be eased to let it keep an eye on "terrorist" groups, the director, William H. Webster, told Congress today.

Mr. Webster told the Senate Subcommittee on Security and Terrorism that the revised rules being worked out with the Justice Department would not violate constitutional guarantees of free speech and political dissent.

The guidelines, issued in 1976, have come under attack for preventing the bureau from infiltrating subversive organizations.

Mr. Webster said he expected the revised rules "within weeks." He did not go into details, but told Senator John P. East, Republican of North Carolina, a conservative, "I think you will be pretty much pleased."

'Duty to Protect Public'

Mr. Webster said the original guidelines dealt with the bureau's domestic security investigations and "the duty to protect the public against political and racial terrorism and against those who would destroy our political system through criminal violence."

He said care must be taken that investigations "do not spill over into areas of legitimate political dissent." The 1976 rules, he said, were an attempt to strike a "delicate balance."

The rules were "properly designed to prevent spying on essentially political organizations," he said, but made it especially difficult to penetrate other groups.

He said new rules would be aimed at "terrorist groups" that are "no different from other criminal enterprises, except that their motivation may be political rather than financial."

Senator Jeremiah Denton, an Alabama Republican, head of the subcommittee, cited, among others, the Socialist Workers Party, the Progressive Labor Party, the Weather Underground Organization and the May 19 Communist Organization as groups that "favor the overthrow of the Government of the United States by force and violence."

He also cited the National Lawyers Guild as an organization that "seeks to exploit the law in order to bring about revolutionary change."

Mr. Webster said groups that "produce propaganda, disinformation and 'legal assistance' may be even more dangerous than those who actually throw the bombs."

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ings of $513 million would be achieved by recovery of overpayments, pro-rating the first month's benefits on the basis of when the application was made and determining disability on a prognosis of at least a 24-month duration.

AS PREPARED

OPENING STATEMENT BY SENATOR JEREMIAH DENTON BEFORE THE SUBCOMMITTEE ON SECURITY AND TERRORISM JUNE 25, 1982

TODAY THE SUBCOMMITTEE CONTINUES ITS INQUIRY INTO THE DOMESTIC SECURITY GUIDELINES, COMMONLY CALLED THE "LEVI GUIDELINES," WHICH GOVERN THE ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION IN DOMESTIC SECURITY INVESTIGATIONS. OUR PRIMARY INTEREST IS THE EFFECT THAT THESE GUIDELINES HAVE HAD ON THE ABILITY OF THE FBI AND OTHER AGENCIES TO GATHER INFORMATION OR INTELLIGENCE AND TO DISCHARGE THEIR DOMESTIC SECURITY AND OTHER RESPONSIBILITIES.

YESTERDAY, THE SUBCOMMITTEE RECEIVED THE TESTIMONY OF FBI DIRECTOR WILLIAM WEBSTER WHO EXPLAINED THE BUREAU'S RECOMMENDATION FOR CHANGES TO THE GUIDELINES.

TODAY WE WILL HEAR FROM FOUR WITNESSES WHO, BY VIRTUE OF LONG EXPERIENCE IN THE AREA OF INTELLIGENCE, ARE WELL PLACED TO OFFER COMMENTS ON THE PRACTICAL EFFECT OF THE "LEVI GUIDELINES" ON THOSE CHARGED WITH GATHERING THE INFORMATION THAT IS NECESSARY FOR THE PROTECTION OF OUR INTERNAL SECURITY.

LITTLE MORE THAN 19 MONTHS AGO, ON NOVEMBER 6, 1980, A JURY IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA FOUND MR. W. MARK FELT, A FORMER ACTING ASSOCIATE DIRECTOR OF THE FBI, AND HIS LONG TIME ASSOCIATE, MR. EDWARD S. MILLER, FORMER ASSISTANT DIRECTOR OF THE FBI'S INTELLIGENCE DIVISION, GUILTY OF CONSPIRING TO "INJURE AND OPPRESS"

RELATIVES AND FRIENDS OF THE RADICAL WEATHER UNDERGROUND ORGANIZATION BY AUTHORIZING SURREPTITIOUS ENTRY INTO THEIR HOMES. THESE ENTRIES TOOK PLACE IN 1972 AND 1973, THREE AND FOUR YEARS PRIOR TO THE PROMULGATION OF THE "LEVI GUIDELINES."

THE OUTCOME OF THE TRIAL HAD THE DEPLORABLE EFFECT OF MOCKING THE BUREAU'S LONG-STANDING CONCEPTION OF ITS DUTIES AND PREROGATIVES IN THE DEFENSE OF THE NATIONAL INTEREST. IN ANOTHER WAY, IT DISCLOSED THE UNRELENTING HOSTILITY OF CERTAIN GROUPS IN AMERICAN SOCIETY TO THE POLITICAL PHILOSOPHY WHICH THIS ADMINISTRATION REPRESENTS AS IT SEEKS TO RESHAPE OUR STRATEGY FOR COUNTERING SOVIET EFFORTS AT SUBVERSION, ESPIONAGE, AND TERRORISM.

MARK FELT WAS FINED $5,000, AND ED MILLER WAS FINED $3,500. CHIEF JUDGE WILLIAM B. BRYANT, WHO PRESIDED OVER THE LONG TRIAL, OFFERED NO EXPLANATION FOR IMPOSING SUCH TRIFLING PENALTIES IN A CASE WHICH, BY SOME ESTIMATES, COST THE U.S. GOVERNMENT $20 MILLION TO PROSECUTE, AND WHICH COST FRIENDS AND SUPPORTERS OF THESE TWO MEN AN ADDITIONAL $1.5 MILLION FOR THEIR DEFENSE.

APPARENTLY, THE SYMBOLISM REPRESENTED BY A FELONY CONVICTION WAS WHAT WAS SOUGHT. THE MEANS FELT AND MILLER USED IN ATTEMPTING TO TRACK DOWN THE ELEMENTS OF THE WEATHERMAN, WHO HAD PERPETRATED NUMEROUS BOMBINGS, VIOLENT STREET DEMONSTRATIONS AND OTHER ACTS OF TERRORISM, WERE FOUND BY THE COURT TO CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL RIGHTS OF OTHER AMERICANS UNDER THE FOURTH AMENDMENT. THAT WAS THE OUTCOME WHICH THE OPPONENTS OF THE FBI WANTED.

HAPPILY FOR THESE GENTLEMEN, PRESIDENT REAGAN HAD THE GOOD SENSE AND THE MORAL COURAGE TO MOVE FORTHRIGHTLY TO UNDO THE TRAVESTY OF JUSTICE. ON MARCH 26, 1981, HE GAVE "FULL AND UNCONDITIONAL" PARDONS TO MESSRS. FELT AND MILLER. THE PRESIDENT NOTED THAT THEY HAD ACTED IN AN HONEST BELIEF THAT THEY WERE DEFENDING NATIONAL SECURITY. MINDFUL OF THE PARDONS THAT HIS PREDECESSOR HAD CONFERRED ON TENS OF THOUSANDS OF YOUNG MEN WHO EVADED MILITARY SERVICE IN VIETNAM, THE PRESIDENT OBSERVED THAT THE COUNTRY COULD BE NO LESS GENEROUS TO TWO MEN WHO ACTED ON HIGH PRINCIPLE TO BRING AN END TO THE TERRORISM THAT WAS THREATENING OUR NATION.

MARK FELT, WHEN HE RETIRED IN 1973, HAD GIVEN THE BUREAU 31 YEARS OF UNBLEMISHED SERVICE, RISING THROUGH THE RANKS FROM AN ENTRY LEVEL STREET AGENT TO THE NUMBER TWO POSITION IN THE FBI. ED MILLER, WHO RETIRED AT THE SAME TIME, HAD SERVED THE BUREAU FOR 24 YEARS. HE ROSE THROUGH THE BUREAU RANKS TO THE NUMBER THREE POSITION.

WE ARE HONORED TO HAVE MR. FELT AND MR. MILLER WITH US THIS MORNING TO GIVE US THE BENEFIT OF THEIR LONG EXPERIENCE.

OUR THIRD WITNESS TODAY WILL BE JOSEPH A. SIZOO, WHO IS THE PRESIDENT OF THE SOCIETY OF FORMER SPECIAL AGENTS OF THE FBI AND WHO RETIRED FROM THE BUREAU IN 1972 AFTER THIRTY-SEVEN YEARS OF SERVICE. MR. SIZOO SERVED IN NUMEROUS EXECUTIVE POSITIONS THROUGHOUT THE BUREAU, INCLUDING DEPUTY ASSISTANT DIRECTOR TO FOUR ASSISTANT DIRECTORS IN THE INTELLIGENCE DIVISION.

WE WELCOME HIM AND VERY MUCH LOOK FORWARD TO HEARING HIS TESTIMONY.

THE FOURTH WITNESS TODAY IS DARIO O. MARQUEZ, JR., PRESIDENT OF MVM INCORPORATED. PRIOR TO FOUNDING THAT COMPANY, MR. MARQUEZ SERVED FOR EIGHT YEARS AS A SPECIAL AGENT OF THE U.S. SECRET SERVICE. HE BEGAN HIS CAREER WITH THE SECRET SERVICE IN NEW YORK CITY, WHERE HE WORKED AS A CRIMINAL INVESTIGATOR. WHILE IN NEW YORK, HE COORDINATED THE ADVANCE SECURITY ARRANGEMENTS FOR NUMEROUS HEADS OF STATE VISITING THE UNITED STATES.

IN 1976, MR. MARQUEZ WAS TRANSFERRED TO THE LOS ANGELES FIELD OFFICE OF THE SECRET SERVICE AND THERE BEGAN HIS STUDIES ON DOMESTIC AND INTERNATIONAL TERRORISM. HE ALSO TRAVELED EXTENSIVELY WITH SECRETARY OF STATE KISSINGER AND VICE PRESIDENT ROCKEFELLER. HIS TESTIMONY WILL ALSO BE OF CONSIDERABLE INTEREST TO US.

WE WILL BEGIN TODAY'S HEARING WITH MR. FELT AND MR. MILLER AS A PANEL.